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Liability Coverage: Requirements for Owners or Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

ICF, Inc.
Washington, DC

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LIABILITY COVERAGE:
Requirements for Owners or Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

A GUIDANCE MANUAL

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PREFACE

This manual was prepared by ICF Incorporated, 1850 K Street, N.W., Suite 950, Washington, D.C. 20006, under EPA Contract No. 68-01-6491. The EPA project officer was Carole J. Ansheles.

This document was compiled in order to provide guidance to owners and operators in complying with the requirements for liability coverage; and to EPA Regional Staff in implementing the requirements.

This document has received Information Clearance No. 2000-0445 from the Office of Management and Budget, for use through December 31, 1983.

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I. INTRODUCTION

A. PURPOSE OF MANUAL

This manual has three purposes:

(1) To assist owners and operators in understanding their responsibilities under the liability coverage requirements of 40 CFR 264 & 265 published in the **Federal Register** on April 16, 1982 and effective as of July 15, 1982;

(2) To assist Regional Administrators and state agencies in developing effective procedures to implement the requirements; and

(3) To promote uniform and coordinated implementation within and among Regions to ease the burden on owners or operators, the insurance industry, and EPA personnel.

The manual describes the responsibilities of the regulated community and the functions that Regional Offices must perform. Checklists, required wordings, and sample submissions are provided as well as sources of further information.

The manual focuses on the **INTERIM STATUS** liability coverage requirements of 40 CFR 265 (Subpart H) and includes separate sections which discuss any special requirements for **PERMITTED FACILITIES** (40 CFR 264). Subpart H also includes requirements for financial assurance of closure and post-closure care. A guidance manual on those requirements is available from EPA Regional Offices. In some instances, where the same information is applicable to both sets of requirements, the information is not repeated in this manual and the reader is referred to the manual for **Financial Assurance for Closure and Post-Closure Care**. Lists of state regulatory agencies, for example, may be found in Appendix B of that manual.

Exhibit I-1 lists the liability coverage regulations with which owners or operators must comply and provides the appropriate Code of Federal Regulations (CFR) citations for each. A chronology of relevant **Federal Register** notices on these regulations is detailed in Exhibit I-2, and related Background Documents and EPA Guidance Manuals are listed in Exhibit I-3.

This manual contains a glossary of key terms. Terms included in the glossary will be identified by the use of bold face **CAPITAL LETTERS** in the first use of the term in each chapter.

EXHIBIT I-1

LIABILITY COVERAGE REQUIREMENT REGULATIONS
40 CFR Parts 264 and 265, Subpart H

Facility Type	Status	Sudden Accidental Occurrences	Nonsudden Accidental Occurrences	Wording of the Instruments	Definitions
All Storage, Treatment, and Disposal Facilities	Interim Status	40 CFR 265.147(a)	See Below	40 CFR 264.151(g)-(j)	40 CFR 265.141
	Permitted Facility	40 CFR 264.147(a)	See Below	40 CFR 264.151(g)-(j)	40 CFR 264.141
Landfills, Surface Impoundments, and Land Treatment Facilities Only	Interim Status	40 CFR 265.147(a)	40 CFR 265.147(b)	40 CFR 264.151(g)-(j)	40 CFR 265.141
	Permitted Facility	40 CFR 264.147(a)	40 CFR 264.147(b)	40 CFR 264.151(g)-(j)	40 CFR 264.141

Source: Title 40, Code of Federal Regulations (CFR).

EXHIBIT I-2

FEDERAL REGISTER CITATIONS FOR LIABILITY COVERAGE REGULATIONS

Item	Date	Federal Register
Proposed Rule	December 18, 1978	43 FR 58995
Reproposed Rule	May 19, 1980	45 FR 33260
Interim Final Rule	January 12, 1981	46 FR 2802
Deferral of Effective Date	May 18, 1981	46 FR 27119
Deferral of Effective Date	October 1, 1981	46 FR 48197
Revised Interim Final Rule	April 16, 1982	47 FR 16544
Wording Correction (Minor)	April 27, 1982	47 FR 17989
Extension of Insurer Qualification Requirements	July 13, 1982	47 FR 30446

EXHIBIT I-3

CURRENT BACKGROUND DOCUMENTS OR GUIDANCE

40 CFR Part 265, Subpart H

Background Document, Parts 264 and 265, Subpart H, Financial Requirements, Final Regulations (December 31, 1980).

Background Document for the Financial Test and Municipal Revenue Test (November 30, 1981).

Background Document, Financial Test for Liability Coverage (April 9, 1982)

Guidance Manual, Financial Assurance for Closure and Post-Closure Care: Requirements for Owners or Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (May 1982).

Final Draft Guidance for Subpart H of the Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (November 1981, General Research Corporation).

Guidance Manual, Liability Coverage: Requirements for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (DRAFT, October 1982, ICF Incorporated.)

The background documents are available for review in the EPA Regional Office libraries and at the EPA Headquarters library, Room 2404, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

A copy of the regulations themselves may be obtained by contacting the RCRA Hotline (800) 424-9346 (toll free) or (202) 382-3000, or the Superintendent of Documents, Washington, D.C. 20402. For questions about specific procedures or issues not covered in the regulations, contact the RCRA financial responsibility specialist in each EPA Region. (See Appendix A.) All documents and correspondence to be submitted to an EPA Regional Administrator should be marked: "Attention: RCRA Financial Requirements" as part of the address. Owners or operators may wish to provide their accountants and insurers with the name and telephone number of the EPA Regional contact and the required wording of instruments included in this manual, as well as copies of the regulations.

B. SUMMARY OF REGULATIONS

As part of the regulation of hazardous waste management facilities under the Resource Conservation and Recovery Act of 1976 as amended (RCRA), EPA has promulgated standards requiring owners or operators to demonstrate financial responsibility for **BODILY INJURY** and **PROPERTY DAMAGE** to **THIRD PARTIES** caused by:

- **SUDDEN ACCIDENTAL OCCURRENCES** arising from operation of a hazardous waste treatment, storage, or disposal facility; or
- **NONSUDDEN ACCIDENTAL OCCURRENCES** arising from operation of a surface impoundment, landfill, or land treatment facility used to manage hazardous waste.

All owners or operators must have coverage for sudden accidental occurrences; all owners or operators of landfills, surface impoundments, and land treatment facilities must have coverage for **both** sudden and nonsudden accidental occurrences. These standards require liability coverage in the amount of at least:

- $1 million for each sudden occurrence, with an **ANNUAL AGGREGATE** of at least $2 million; and
- $3 million for each nonsudden occurrence, with an annual aggregate of at least $6 million.

Both sets of coverage requirements are defined not to include any **LEGAL DEFENSE COSTS** that might be incurred. The dollar limits do not apply per facility but to the owner or operator. That is, the same limits apply regardless of the number of facilities for which the owner or operator is responsible. (The minimum annual aggregate coverage requirement takes into account the risk of multiple occurrences in the same year among facilities belonging to one owner or operator.)

Owners or operators must demonstrate the required liability coverage by submitting evidence of insurance (either a Hazardous Waste Facility Liability ENDORSEMENT or a CERTIFICATE OF INSURANCE) or by submitting documents showing that they meet the requirements of the FINANCIAL TEST for liability coverage. They may use insurance for part of the required coverage limit and the financial test for the remainder, or State assurances meeting 40 CFR 265.149 may be submitted.

The regulations apply to both the owner and the operator of the facilities. The actual demonstration of liability coverage, however, may be offered by either the owner or the operator. EPA will consider both parties responsible for carrying out the requirements, and leaves it to the parties themselves to undertake, share, or divide the actual demonstration of coverage.

All owners or operators must demonstrate that they have obtained liability coverage for sudden accidental occurrences by the effective date of the regulations (July 15, 1982). The required liability coverage for nonsudden accidental occurrences must be demonstrated for surface impoundments, landfills, or land treatment facilities according to the following schedule:

(1) For an owner or operator with sales or revenues totalling $10 million or more, 6 months after the effective date of these regulations (i.e., January 15, 1983).

(2) For an owner or operator with sales or revenues greater than $5 million but less than $10 million, 18 months after the effective date of these regulations (i.e., January 15, 1984).

(3) All other owners or operators, 30 months after the effective date of these regulations (i.e., January 15, 1985).

Where the owner and operator of a facility are two different parties, the total sales or revenues of the owner or operator with the **largest** sales or revenues in the fiscal year preceding the effective date will determine which deadline applies (see 40 CFR 265.147(b)(4)).

The liability coverage for a facility must be maintained in full force and effect unless and until (1) an alternate form of coverage is demonstrated (i.e., a different insurance policy or the use of the financial test), or (2) certifications of closure are received by the Regional Administrator. In other words, **liability coverage is an operating life responsibility only**; no liability coverage is required after certification of closure of the facility or facilities in question. Also, an owner or operator may be released if ownership or operation of the facility is transferred, but only in accordance with the specific conditions of such transfers.

In the event that an insurer becomes insolvent or has its authority to issue the policy revoked or suspended, the owner or operator must establish

alternative liability coverage within sixty days. Although the regulations refer to the bankruptcy of an insurer, technically speaking, insurance companies do not enter bankruptcy, but are liquidated under state insolvency laws. This guidance manual uses the latter terminology.

An owner or operator must notify the Regional Administrator by certified mail of the commencement of a bankruptcy proceeding naming the owner or operator as debtor within 10 days after commencement of the proceeding.

Until permitted under RCRA, EXISTING FACILITIES are subject to the interim status rules. When a facility receives a RCRA permit, the rules for permitted facilities will apply (See Exhibit I-1). The liability coverage requirements for interim status and permitted facilities are quite similar. Therefore, the following chapters are based on the interim status requirements; however, each chapter includes subsections which discuss any provisions unique to permitted facilities.

C. ROLES OF EPA HEADQUARTERS AND REGIONAL OFFICES

The EPA Regional Offices play the lead role in determining compliance with the liability coverage standards. Headquarters develops overall agency policy and serves as a clearinghouse of information and source of technical assistance.

Because this is a new program, problems may arise that either must be resolved case-by-case or had not been anticipated by the regulations (or this guidance). To assure uniformity of implementation, EPA Regional Offices should communicate with EPA Headquarters to determine if such problems have arisen elsewhere and to discuss options for resolving the questions. Further guidance or memoranda will be distributed by Headquarters as additional issues are resolved. Owners or operators and financial community representatives are also free to contact Headquarters but should initially discuss all questions with the Regional Office staff (see Appendix A) or appropriate state agency (see Appendix B-1 in the manual for **Financial Assurance for Closure and Post-Closure Care**) who have primary responsibility for implementing the requirements and overseeing compliance.

As administrative experience with the financial requirements accumulates, allocation of responsibility between Headquarters and the Regional Offices for review of compliance may shift in certain circumstances to exploit potential efficiencies. For example, the feasibility of centralizing and automating annual review of financial test data is under investigation.

In order to foster uniform implementation of the requirements, Headquarters will be available to provide guidance on various matters, including review of liability coverage of owners or operators who have facilities in more than one EPA Region; procedures for coordination with Enforcement staff; and responses to bankruptcies of owners or operators and liquidation of insurers.

D. RELATIONSHIP BETWEEN STATE AND FEDERAL REQUIREMENTS

The relationship between State and Federal liability coverage requirements is virtually the same as between State and Federal closure and post-closure financial requirements. To understand the relationship between Federal and State financial requirements, two important facts must be remembered: First, the Resource Conservation and Recovery Act (RCRA) does not prevent or preempt states from independently enacting liability coverage requirements, and a number of states have done so. Second, under RCRA, states may apply to EPA for the authority to administer a State hazardous waste management program in lieu of Federal implementation of the RCRA program. Hazardous waste facilities may be subject to State liability coverage requirements and must satisfy applicable rules, whether promulgated as part of an EPA-authorized State program or independently. Compliance with State requirements may satisfy Federal standards in whole or part.

State program authorization typically proceeds from **INTERIM AUTHORIZATION** to **FINAL AUTHORIZATION**. As of September 1, 1982, thirty-four states had received interim authorization (see Exhibit I-4).

To obtain final authorization the State program must be equivalent to the Federal program and consistent with the Federal program and programs in other states and must provide adequate enforcement of compliance. The earliest a state may obtain final authorization is January 26, 1983.

A state may receive **PHASE I INTERIM AUTHORIZATION** if its program satisfies the Federal standards promulgated on May 19, 1980. The standards cover many aspects of the hazardous waste management program, but they do not include financial responsibility standards, except the requirements for estimating the costs of closure and post-closure care at interim status facilities. Thus, a state need not have established liability coverage requirements to receive Phase I authorization. As of September 1, 1982, 29 states had Phase I interim authorization only (see Exhibit I-4).

A state with Phase I interim authorization has responsibilty for most aspects of the hazardous waste management program, except permits for hazardous waste management facilities: the state receives authorization to regulate interm status facilities; EPA retains the responsibility to issue RCRA permits. Thus, owners or operators of facilities receiving RCRA permits in Phase I states are required to meet the Federal financial responsibility standards, including the liability coverage requirements promulgated in April 1982.

Owners or operators of interim status facilities in states with Phase I authorization must comply only with applicable State financial requirements. The State requirements may apply to both interim status and permitted status facilities. In some states, no financial requirements for liability coverage are in effect at this time. A number of Phase I states do have, or are

EXHIBIT I-4

STATES WITH INTERIM AUTHORIZATION AS OF SEPTEMBER 1, 1982

Alabama	Kentucky	Oklahoma
Arizona	Louisiana	Oregon
*Arkansas	Maine	Pennsylvania
California	Maryland	Rhode Island
Connecticut	Massachusetts	South Carolina
Delaware	*Mississippi	Tennessee
Florida	Montana	*Texas
*Georgia	Nebraska	Utah
Illinois	New Hampshire	Vermont
Indiana	*North Carolina	Virginia
Iowa	North Dakota	Wisconsin
Kansas		

* These states have received Phase II interim authorization in addition to Phase I.

developing financial requirements, including liability coverage standards comparable to the Federal requirements.

States with **PHASE II INTERIM AUTHORIZATION** may issue RCRA permits. Phase II interim authorization is granted in components. Component A covers storage facilities, Component B covers incinerators, Component C covers land disposal facilities. To receive Phase II interim authorization states must demonstrate substantial equivalence to the RCRA liability requirements for both interim status and permitted facilities. However, states which had submitted draft applications for Phase II authorization prior to April 16, 1982 (i.e., Alabama, Arkansas, California, Georgia, Kansas, Kentucky, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, and Texas) may receive Phase II interim authorization if they commit to adopt substantially equivalent requirements as quickly as practicable, but in no case later than the State's application for an additional Component of Phase II.

As of September 1, 1982 five states had received Phase II interim authorization (see Exhibit I-4). Owners or operators in states with Phase II authorization must comply only with applicable State liability requirements. The State standards will generally be substantially equivalent to the Federal standards. However, owners or operators should note that Phase II authorization may well establish some additional liability coverage requirements for interim status facilities. If the state lacks Phase II authorization to permit certain types of facilities (e.g., land disposal), then those facilities will receive RCRA permits issued by EPA and the Federal liability coverage standards will apply. In the latter instance, the facilities may also be subject to State liability coverage requirements which may be used to satisfy in whole or in part the liability coverage requirements for permitted facilities (40 CFR 264.149).

Owners or operators of facilities in **states without authorization** must satisfy the Federal liability coverage standards promulgated on April 16, 1982. Nonauthorized states may have their own liability coverage standards as well. Satisfaction of these State requirements may satisfy, in whole or in part, the Federal RCRA requirements, as discussed in Chapter IV.

II. SATISFYING RCRA LIABILITY COVERAGE REQUIREMENTS USING INSURANCE

Owners or operators may satisfy the RCRA liability coverage requirements by obtaining insurance in which an insurance company promises to satisfy liability claims relating to **SUDDEN ACCIDENTAL OCCURRENCES** or **NONSUDDEN ACCIDENTAL OCCURRENCES** arising from operation of the facility or facilities. To prove that an insurance contract has been arranged, either a copy of an **ENDORSEMENT** applicable to the insurance policy must be submitted to the Regional Administrator; or, a **CERTIFICATE OF INSURANCE**, not part of the insurance policy, must be submitted. The regulations specify the wording required for the endorsement and certificate of insurance.

The requirements governing liability insurance are not to be confused with the Subpart H requirements that allow use of **CLOSURE OR POST-CLOSURE CARE INSURANCE** for financial assurance (See 40 CFR §§265.143(e) and 265.145(e)).

The regulations pertaining to RCRA liability insurance are as follows:

EXHIBIT II-1

RCRA LIABILITY INSURANCE REGULATIONS

Topic	Interim Status	Permitted Facilities
Sudden Accidental Insurance	40 CFR §265.147(a)(1)	40 CFR §264.147(a)(1)
Nonsudden Accidental Insurance	40 CFR §265.147(b)(1)	40 CFR §264.147(b)(1)
Insurance Endorsement Required Wording	40 CFR §264.151(i)	40 CFR §264.151(i)
Certificate of Insurance Required Wording	40 CFR §264.151(j)	40 CFR §264.151(j)

Source: Title 40, **Code of Federal Regulations** (CFR).

A. RESPONSIBILITIES OF THE OWNER OR OPERATOR

This section describes the responsibilities of owners or operators using insurance to demonstrate liability coverage. A checklist of these responsibilities appears in Attachment II-1 at the end of this chapter.

1. **Types and Amounts of Coverage.** Insurance may be used to cover the requirements for sudden accidental occurrences, nonsudden accidental occurrences, or both in combination.

- **Sudden Accidental Occurrences.** The owner or operator must obtain and maintain coverage for **BODILY INJURY** and **PROPERTY DAMAGE** in the amount of at least $1 million per occurrence, with an **ANNUAL AGGREGATE AMOUNT** of at least $2 million, exclusive of **LEGAL DEFENSE COSTS**.

- **Nonsudden Accidental Occurrences.** The owner or operator must obtain and maintain coverage for bodily injury and property damage in the amount of at least $3 million per occurrence, with an annual aggregate amount of at least $6 million, exclusive of legal defense costs.

All facilities must be covered for sudden accidents; only owners or operators of surface impoundments, landfills, or land treatment facilities are also required to maintain coverage for **LIABILITIES** resulting from nonsudden accidental occurrences. Coverage must be maintained until certification of closure. The required amount of coverage applies to the owner or operator, not to each facility. That is, regardless of whether an one owner or operator is responsible for one facility or several facilities, the same minimum coverage amount applies; there is no need to secure separate coverage for each facility. Any portion of the required amount of coverage that is not met by the insurance must be met by use of the **FINANCIAL TEST** (see Chapter III of this manual).

RCRA requirements for liability insurance leave the negotiation of **DEDUCTIBLES** up to the insured and insurer. However, under the terms specified in the certificate of insurance and the endorsement, unless the amount of the deductible is assured using the financial test, the insurer is liable for payment of amounts within the deductible with a right of reimbursement by the insured for such payment. This means that the owner or operator has liability coverage on a **FIRST-DOLLAR BASIS**.

Under the current regulations, however, an owner or operator may obtain a **VARIANCE** in the amount of liability coverage required by demonstrating that the required amount is inconsistent with the degree and duration of risk associated with his facilities. The Regional Administrator may also adjust the required amount or impose the nonsudden coverage requirements on facilities other than landfills, surface impoundments, or land treatment facilities. As discussed in the preamble to the RCRA liability coverage requirements, EPA plans to propose the deletion of the variance provisions because data are not presently available that would enable EPA to set forth specific national criteria relating liability coverage requirements to risk factors. The differences in risk at different facilities will ordinarily be reflected in the premiums paid for insurance coverage with lower risk facilities paying less than higher risk facilities.

2. Qualifications of Insurer. Effective October 16, 1982, the insurance company must be licensed to transact business as an insurer in one or more states, or eligible to provide EXCESS OR SURPLUS LINES INSURANCE in one or more states. Under the Federal RCRA requirements, the insurance company need not be licensed in the state in which the facility is located. States may adopt more strict requirements; they may require that facilities be insured by companies licensed to transact business in the state. If there is any question about the qualifications of an insurer, the owner or operator should first contact the insurer about its licenses and then confirm with the insurance regulatory authorities of the appropriate state or states. (See Appendix B-3 in the Manual for **Financial Assurance for Closure and Post-Closure Care** for a list of state insurance authorities.)

3. Obtaining Insurance Coverage. Many owners or operators will already have some form of sudden accidental insurance coverage under their general liability policies. For example, an owner or operator with standard COMPREHENSIVE GENERAL LIABILITY (CGL) coverage may already have the required coverage and can ask its insurer to provide a certificate of insurance meeting RCRA requirements or arrange for the endorsement. Some types of existing coverage may not be suitable for meeting RCRA requirements, and owners or operators are advised to consult their insurance BROKER or AGENT in any case.

On the other hand, few owners or operators may have a policy covering nonsudden accidental occurrences. If your insurance agent or broker for general liability insurance is not able to help, the following organizations can identify companies providing nonsudden insurance:

- Alliance of American Insurers; Contact: Sally Kirkpatrick, (202) 822-8811.
- American Insurance Association; Contact: James L. Kimble, (202) 293-3010.
- Independent Insurance Agents of America; Contact: Richard Kasyjanski, (212) 285-4250.
- Insurance Information Institute; Contact: Daniel Poole, (212) 669-9200.
- National Association of Insurance Brokers; Contact: David Lambert, (202) 783-8880.
- National Association of Insurance Commissioners; Contact: Jean DeLauch, (414) 784-9540.
- Professional Insurance Agents; Contact: Patricia A. Borowski, (703) 784-9540.

In recent years, insurers have made available policies explicitly designed for pollution-related claims. Called **ENVIRONMENTAL IMPAIRMENT LIABILITY** or **POLLUTION LIABILITY** insurance, these policies cover liabilities arising from nonsudden gradual releases. These policies are offered on a **CLAIMS MADE** basis. (Use of the term "occurrence" in the regulations should **not** be interpreted as limiting acceptable insurance to policies that provide **OCCURRENCE-BASED** policies or as excluding claims-made policies.) Some environmental impairment or pollution liability policies may cover sudden pollution incidents as well as nonsudden. To satisfy the requirement for coverage of sudden accidental occurrences, however, sudden **pollution** coverage by itself is insufficient; general liability coverage must also be demonstrated.

Where existing CGL coverage has **POLICY LIMITS** beneath the minimum amounts required by RCRA, the owner or operator may arrange to supplement that coverage by purchasing **EXCESS** or **UMBRELLA COVERAGE** up to the required amounts. Evidence for each of these coverage layers (i.e., a certificate or endorsement) would need to be submitted along with evidence of the primary coverage. Consult your insurance agent or broker for more details.

Insurers will generally require detailed information on the facilities and the owner or operator before writing a policy covering nonsudden accidental occurrences. Insurers may require on-site scientific and engineering assessments along with a review of current financial statements. It could take as long as several months to secure nonsudden coverage if an extensive risk assessment survey is required or if numerous sites are to be surveyed. However, owners or operators will not be required to demonstrate coverage for nonsudden accidental occurrences until at least 6 months after the effective date of the regulations (see Section 4 below).

4. Submission of Documents to EPA. The owner or operator must demonstrate liability coverage by submitting to the Regional Administrator an originally **signed** duplicate endorsement or certificate of insurance. The wording of the endorsement or certificate must be identical to that required by the regulations in force at the time of submission (see Attachment II-3 and II-4 for the current wording). The policy itself need **not** be submitted. However, the owner or operator must submit a duplicate original of the policy, including all endorsements, whenever requested by the Regional Administrator. Also, under the terms of the endorsement and certificate, the insurer agrees to provide a duplicate original of the policy, if requested by the Regional Administrator.

Different deadlines for submissions apply as follows:

- **Sudden Accidental Occurrences.** The owner or operator must demonstrate coverage by the effective date of the regulations (July 15, 1982).

- **Nonsudden Accidental Occurrences.** The owner or operator must demonstrate coverage by the dates listed below, depending on the sales or revenues in the fiscal

year previous to the effective date of the regulations. If there is more than one owner or operator, or if owner and operator are different parties, then the sales or revenues of the owner or operator with the largest sales or revenues will determine the date by which coverage must be demonstrated.

Sales or Revenues of Applicable Owner or Operator In Fiscal Year Previous to Effective Date of Regulation	Period After Effective Date of Regulations That Policy Must Be Demonstrated
At least $10 million	6 months (January 15, 1983)
Greater than $5 million Less than $10 million	18 months (January 15, 1984)
Less than $5 million	30 months (January 15, 1985)

If an owner or operator does not have to demonstrate coverage for nonsudden occurrences within six months after the effective date of regulations, it must submit a letter to the Regional Administrator by January 15, 1983 stating when coverage will be obtained. This requirement applies to owners or operators with total sales or revenues less than $10 million.

Owners or operators who use different insurance policies for different layers of coverage must submit a certificate or endorsement for each layer. If excess insurance is used, the certificate of insurance or endorsement should indicate the amounts of coverage provided for each occurence and the annual aggregate in excess of stated underlying limits of coverage (see Attachments II-3 and 4). When a policy has no annual aggregate limit, that fact should be noted in the endorsement or certificate of insurance. In addition, if an owner or operator has a policy with separate limits for bodily injury and property damage, each separate limit must amount to at least $1 million for each occurrence and $2 million annual aggregate for sudden accidental occurrences and $3 million for each occurrence and $6 million annual aggregate for nonsudden accidental occurences.

Owners or operators who are SELF-INSURING for part of the liability coverage requirement by using the financial test in connection with insurance coverage should consult Section A.4 of Chapter III for required submissions.

5. Maintaining Coverage. The owner or operator must maintain the insurance policy in full force and effect until either (a) release has been obtained from liability coverage requirements (see Section 7) or (b) alternate coverage has been obtained. If the insurer enters liquidation or has its authority to issue the policy suspended or revoked, the owner or operator must establish substitute liability coverage within 60 days after the event.

In addition, the owner or operator must notify the Regional Administrator by certified mail within 10 days after the commencement of bankruptcy proceedings naming the owner or operator as debtor.

6. Notice of Cancellation or Termination of the Insurance Policy by the Insurer. Cancellation will only be effective sixty days after written notification from the insurer has been received by the Regional Administrator. Termination of the policy for any other reason than cancellation (e.g., expiration, non-renewal) will only be effective thirty days after written notification from the insurer has been received by the Regional Administrator.

7. Release from RCRA Liability Coverage Requirements. To obtain a release from the liability coverage requirements, the owner or operator must submit to the Regional Administrator certification that all covered facilities have been closed in accordance with the specifications in the approved closure plan. The certification must be supplied by both the owner or operator and by an **independent registered professional engineer.**

8. Permitted Facility Requirements. For all new facilities, an endorsement or certificate of insurance for sudden and, if applicable nonsudden accidental occurrences, must be submitted to EPA 60 days before the initial receipt of waste for treatment, storage, or disposal. Liability coverage must be effective by the time of initial receipt of wastes. There is no phase-in period for nonsudden coverage for new facilities.

EXISTING FACILITIES must submit evidence of sudden accidental occurrence insurance with their Part B permit applications. However, existing facilities which have not established such coverage because they are located in **INTERIM AUTHORIZED** states with no liability coverage requirements as yet, should instead specify in their Part B applications the mechanism they intend to use to comply with the liability coverage requirements. The instruments must be submitted to the Regional Administrator prior to final permit decisions. Owners and operators may wish to obtain liability coverage earlier than required to improve relations with the public. Until the applicable deadline in the three-year phase-in of nonsudden coverage requirements has passed, securing nonsudden coverage is not a condition of receiving a RCRA permit for existing facilities.

B. REGIONAL OFFICE RESPONSIBILITIES

This section outlines the duties of the Regional Office in ensuring satisfaction of requirements. A summary checklist appears in Attachment II-2 at the end of this chapter.

1. Qualifications of Insurer. Effective October 16, 1982, issuing institutions must be licensed to transact the business of insurance or eligible to provide excess or surplus lines insurance in any of one or more states. EPA Regional Office personnel should contact the insurer and appropriate state insurance regulatory agencies to verify qualifications. See Appendix B-3 of the manual for **Financial Assurance for Closure and Post-Closure Care** for a list of appropriate state authorities. The insurer need not be qualified in the state in which the covered facility is located.

2. Conformity to Other Requirements. When an owner or operator submits an endorsement or a certificate of insurance to the EPA Regional Office, the Regional Administrator must verify that:

- The wording of the endorsement is exactly as required by the regulations (see Attachment II-3);
- The wording of the certificate is exactly as required by the regulations (see Attachment II-4).
- Sudden accidental occurrences coverage is demonstrated by the effective date of the regulations (interim status facilities) or 60 days before the first receipt of hazardous wastes (new permitted facilities).
- Nonsudden accidental occurrences coverage is demonstrated 60 days before initial receipt of waste (new permitted facilities) or by the dates listed below for existing facilities, depending on the revenues or sales of the owner or operator of the facility with the largest sales or revenues:

Sales or Revenues of Applicable Owner or Operator In Fiscal Year Previous to Effective Date of Regulation	Period After Effective Date of Regulations That Policy Must Be Effective
At least $10 million	6 months (January 15, 1983)
Greater than $5 million Less than $10 million	18 months (January 15, 1984)
Less than $5 million	30 months (January 15, 1985)

- Nonsudden coverage (interim status only), the owner and operator has sent a letter to the Regional Administrator no later than January 15, 1983, stating date of intended coverage. Owners or operators with sales or revenue over $10 million need not submit such a letter, but must demonstrate coverage by that date.

3. Recordkeeping and Tracking Systems. As endorsements or certificates of insurance are received, the following information should be recorded: the name, address, and EPA Identification Number of the facility; insurance policy number and insurer name; amount of coverage for each facility and effective date. The code for insurance policies for liability coverage and the name of the insurer should be entered into the Hazardous Waste Data Management System (HWDMS), Version V.

Automatic data processing systems can be used to record the intended date of nonsudden coverage stated in the letter from the owner or operator and track whether or not coverage is established by the intended date, or at the very latest, the required deadline. A list of current insurance contracts could be recorded, not only under the owner's or operator's name, but also under each insurer's name, so that in the case of liquidation, de-licensing, or other reasons, it would be easy to determine which owners or operators need to obtain financial assurance elsewhere. This system could also be used to keep track of mergers and changes in the names of insurers.

4. Variance Requests. Although EPA plans to propose to delete the variance provision from the liability requirements, Regional Administrators may receive variance requests from owners or operators. The burden of documentation rests on the owner or operator requesting a variance. The Regional Administrator may request whatever additional technical information he deems necessary. Following a tentative decision on the variance request, a public hearing may be held. Since the Agency will need to continue to study the issues related to these provisions, especially issues raised in comments received after publication of its proposal to delete variance provisions, the Regional Offices should communicate closely with Headquarters regarding any requests for variances and actions contemplated in response to such requests.

5. Maintaining Coverage. The Regional Administrator must ensure that alternate liability coverage is provided by the owner or operator if the insurance company becomes disqualified, ceases operations, or files for liquidation. Note that the insurer is not required to notify the Regional Administrator or the owner or operator regarding such an eventuality. Regional Offices are not expected to develop surveillance systems to monitor such events, but should be prepared to instruct owners or operators to obtain alternate assurance in the event the Office becomes aware of disqualification, liquidation, or termination of the insurer. The Hazardous Waste Data Management System may prove useful for this, as discussed in Section I of Chapter II of the Manual for **Financial Assurance For Closure and Post-Closure Care.**

Regional Office staff may want to review periodically the qualifications of insurers and the adequacy of insurance policies. To avoid duplication of effort, Regional Offices should contact EPA Headquarters before undertaking such activities. A program for monitoring samples of insurance policies will be developed by Headquarters. The Agency will seek to rely on the existing oversight activities of state insurance departments to the maximum extent. Further guidance will be forthcoming.

6. Cancellation or Termination of Insurance. The insurer or the owner or operator may cancel, terminate, or fail to renew the policy but must first provide notice to the Regional Administrator. Cancellation may not occur during the 60 days beginning with the date of receipt by the Regional Administrator of a notice of cancellation from the insurer. Termination for any other reason may not occur during the 30 days beginning with the date of receipt of a notice by the Regional Administrator.

Upon receipt of a notice of cancellation or termination, the Regional Administrator should monitor the situation to ensure that alternate coverage is established before the date the existing policy expires. The owner or operator should be contacted to ensure he is aware of the notice and the need to maintain coverage.

7. Release from Requirements. The Regional Administrator should release the owner or operator from the liability coverage requirements if proper certification of closure has been submitted from both owner or operator and an independent registered professional engineer. The certification must state that the facility has been closed in accordance with the specifications in the closure plan. Certification must be supplied for all facilities covered by the insurance policy before the owner or operator may terminate insurance.

8. Permitted Facility Requirements

For new facilities, the endorsement or certificate of insurance for sudden as well as nonsudden coverage, if applicable, must be submitted to EPA at least 60 days before the initial receipt of waste. The phase-in schedule for nonsudden accidental occurrence coverage does not apply to new facilities. Owners or operators of new facilities must obtain coverage for nonsudden accidental occurrences effective by the date of initial receipt of waste.

Existing facilities must submit evidence of sudden accidental occurrence liability coverage with their Part B permit applications. Until the applicable deadline in the three-year phase-in of nonsudden coverage requirements has passed, securing nonsudden coverage is not a condition of receiving a RCRA permit for existing facilities. However, in states which have received interim authorization and do not have liability coverage requirements, existing facilities need not submit financial instruments with the Part B application. Rather, owners or operators need only specify what mechanism they intend to use; however, the instruments for sudden accidental

occurrence coverage and, if applicable, for nonsudden accidental occurrence coverage must be submitted to the Regional Administrator prior to final permit decision.

The Regional Administrator may wish to require the submission of the insurance policy itself as part of the permit review process. Guidance will be forthcoming concerning review of policies, especially on types of exclusions and provisions that should be considered to be in conformity with standard industry practice.

C. SOURCES OF FURTHER INFORMATION

State agencies listed in Appendix B-3 of the Manual for **Financial Assurance for Closure and Post-Closure Care** can advise whether an insurer is licensed or eligible to provide insurance. In addition, national trade associations can supply general information about the insurance industry. Major national organizations include the following:

1. American Insurance Association
   85 John Street
   New York, New York 10038
   (212) 669-0400
   Trade and service organization of the property and casualty insurance industry.

2. Insurance Information Institute
   110 William Street
   New York, New York 10038
   (212) 669-9200
   Educational, fact-finding, and communications organization for all lines of insurance except life and health insurance.

3. Independent Insurance Agents of America
   100 Church Street
   New York, New York 10007
   (212) 285-4250
   Trade association of independent insurance agents.

4. Professional Insurance Agents
   400 North Washington Street
   Alexandria, Virginia 22314
   (703) 836-9340
   Trade association of insurance agents.

5. National Association of Insurance Commissioners
   350 Bishops Way
   Brookfield, Wisconsin 53005
   (414) 784-9540
   Organization of state insurance commissioners.

6. Alliance of American Insurers
   20 North Wacker Drive
   Chicago, Illinois 60606
   (312) 558-3700
   Trade association of fire and casualty insurance companies.

7. National Association of Insurance Brokers
   311 First Street, N.W.
   Suite 700
   Washington, D.C. 20001
   (202) 783-8880
   Trade association of commercial insurance brokers.

8. National Association of Independent Insurers
   2600 River Road
   Des Plaines, Illinois 60018
   (312) 297-7800
   Trade association of fire, casualty, and surety insurers.

9. National Insurance Consumer Organization
   344 Commerce Street
   Alexandria, Virginia 22314
   (703) 549-8050
   Non-profit public interest membership organization.

ATTACHMENT II-I

RCRA LIABILITY INSURANCE COVERAGE CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *

(1) —— Check that the policy covers the minimum required amount per occurrence and per year:

—— For sudden accidental occurrences, coverage must be at least $1 million per occurrence, with an annual aggregate amount of at least $2 million, exclusive of legal defense costs.

—— For nonsudden accidental occurrences, coverage must be at least $3 million per occurrence, with an annual aggregate amount of at least $6 million, exclusive of legal defense costs.

—— Coverage must be provided for both bodily injury and property damage.

(2) —— Verify that the insurer is licensed to transact the business of insurance or eligible as an excess or surplus lines insurer in at least one state (effective October 16, 1982).

(4) —— Submit a signed duplicate original certificate of insurance or endorsement to EPA worded exactly as specified (See Attachments II-3 and II-4).

" —— For sudden accidental occurrences, demonstrate coverage by effective date of regulations (existing facilities) or 60 days before initial receipt of wastes (new permitted facilities)

" —— For nonsudden occurrences, demonstrate coverage 60 days before initial receipt of wastes (new permitted facilities) or by the dates listed below (existing facilities) depending on sales or revenues of the owner or operator with the largest sales or revenues:

—— Sales or revenues of $10 million or more, six months after effective date of regulations (January 15, 1983)

—— Sales or revenues greater than $5 million but less than $10 million, 18 months after effective date of regulations (January 15, 1984)

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*Numbers correspond to paragraphs in Section A.

ATTACHMENT II-I (continued)

RCRA LIABILITY INSURANCE COVERAGE CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *		
	——	Sales or revenues $5 million and less, 30 months after effective date of regulations (January 15, 1985)
"	——	Submit letter giving estimated date of coverage for nonsudden accidental occurrences by 6 months after effective date of regulations (interim status) if coverage is not required by that time.
(5)	——	Maintain policy in full force until released from liability coverage requirements or alternate coverage is obtained.
"	——	Arrange for alternate coverage within 60 days in the event of liquidation or ineligibility of insurer.
"	——	Notify Regional Administrator within 10 days after commencement of a bankruptcy proceeding naming owner or operator as debtor.
(6)	——	If insurer gives notice to owner or operator of cancellation or termination, arrange for alternate coverage that will be effective prior to expiration of present coverage.
"	——	Request approval to terminate the insurance policy (1) when alternate coverage is substituted, or (2) when released from closure requirements by the Regional Administrator. Give 60 days written notice to the Regional Administrator.

*Numbers correspond to paragraphs in Section A.

ATTACHMENT II-2

RCRA LIABILITY INSURANCE COVERAGE CHECKLIST FOR REGIONAL OFFICES

The Regional Administrator should ensure that:

Paragraph Number *

(1) —— The insurer is licensed to transact the business of insurance or eligible as a provider of excess or surplus lines insurance in any of one or more states (effective October 16, 1982).

(2) —— The wording of the endorsement (if supplied) is exactly as required by the regulations (see Attachment II-3).

" —— The wording of the certificate of insurance (if supplied) is exactly as required by the regulations (see Attachment II-4).

" —— For sudden accidental occurrences, coverage is demonstrated by effective date of regulations (interim status) or 60 days before new facilities receive wastes (permitted status).

" —— For nonsudden accidental occurrences, coverage is demonstrated 60 days before initial receipt of wastes (new permitted facilities) or by dates listed below, depending on sales or revenues of the owner or operator with the largest sales or revenues (interim status facilities):

—— Sales or revenues of $10 million or more, 6 months after effective date of regulations (January 15, 1983).

—— Sales or revenues over $5 million but less than $10 million, 18 months after effective date of regulations (January 15, 1984).

—— Sales or revenues $5 million or less, 30 months after effective date of regulations (January 15, 1985).

" —— For nonsudden occurrences, a letter is submitted giving estimated date of coverage no later than 6 months after effective date of regulations, if coverage is not required at that time.

* Numbers correspond to paragraphs in Section B.

ATTACHMENT II-2 (continued)

RCRA LIABILITY INSURANCE COVERAGE CHECKLIST FOR REGIONAL OFFICES

Paragraph Number		
(3)	——	Relevant information is stored in a recording and tracking system.
(4)	——	Headquarters is notified upon receipt of variance requests.
(5)	——	Alternate coverage is provided within 60 days if insurance company becomes disqualified, ceases operations, or files for liquidation.
(6)	——	The owner or operator or the insurer is contacted for further information following receipt of a notice of cancellation or termination.
"	——	Alternate coverage is provided within 60 days after notification of cancellation, or 30 days after notification of any other termination or non-renewal of policy.
(7)	——	Approve release from liability coverage requirements, when proper certification of closure has been received from owner or operator and an independent registered professional engineer.

* Numbers correspond to paragraphs in Section B.

ATTACHMENT II-3

REQUIRED WORDING FOR HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT 40 CFR 264.151(i)

A hazardous waste facility liability endorsement as required in 40 CFR §§ 264.147 or 265.147 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under 40 CFR 264.147 or 265.147. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.*

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not

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* If the endorsement is for an excess insurance policy, insert the following sentence: "$———— each occurrence and $———— annual aggregate in excess of the underlying limits of $———— each occurrence and $———— annual aggregate."

ATTACHMENT II-3 (continued)

REQUIRED WORDING FOR HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT 40 CFR 264.151(i)

apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 40 CFR 264.147(f) or 265.147(f).

(c) Whenever requested by a Regional Administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the Regional Administrator a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer or the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located.

Attached to and forming part of policy No. ———— issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this —— day of ————, 19 –. The effective date of said policy is —— day of ————, 19 –.

I hereby certify that the wording of this endorsement is identical to the wording specified in 40 CFR 264.151(i) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

ATTACHMENT II-4

REQUIRED WORDING FOR HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE 40 CFR 264.151(j)

A certificate of liability insurance as required in 40 CFR §§ 264.147 or 265.147 must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Certificate of Liability Insurance

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under 40 CFR 264.147 or 265.147. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.* The coverage is provided under policy number ————————, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 40 CFR 264.147(f) or 265.147(f).

————————

* If the certificate of liability insurance is for an excess insurance policy, insert the following sentence: "$———————— each occurrence and $———————— annual aggregate in excess of the underlying limits of $———————— each occurrence and $———————— annual aggregate."

ATTACHMENT II-4 (continued)

REQUIRED WORDING FOR HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE 40 CFR 264.151(j)

(c) Whenever requested by a Regional Administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the Regional Administrator a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer or the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located.

I hereby certify that the wording of this instrument is identical to the wording specified in 40 CFR 264.151(j) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

III. SATISFYING RCRA LIABILITY COVERAGE REQUIREMENTS USING THE FINANCIAL TEST

The RCRA liability coverage requirements may be satisfied by passing a test of financial soundness. The FINANCIAL TEST demonstrates that the owner or operator has adequate resources to cover the requirements for liability coverage. The tests are stringent enough so that even in the event of a rapid deterioration in the owner's or operator's financial health, there is reasonable assurance that funds will be available to meet obligations.

The financial test regulations for liability coverage are nearly identical to those for assurance of closure and post-closure care costs.[1] Indeed, owners or operators who wish to satisfy **both** liability coverage and closure or post-closure care financial assurance through the financial test must use the same documentation. However, there are differences between the regulations which are outlined below:

- Unlike the closure or post-closure assurance requirements, the liability coverage requirements cannot be satisfied by a CORPORATE GUARANTEE by the owner's or operator's PARENT CORPORATION.

- The Regional Administrator is granted specific powers under the closure and post-closure care regulations **not** granted under the liability coverage regulations, such as the power to request additional financial reports from owners or operators.

- The owner or operator must supply evidence of liability coverage within 90 days after the close of a fiscal year if the year-end financial statements reveal the firm no longer satisfies the test requirements. In the case of closure or post-closure care assurance, the owner or operator must **notify** the Regional Administrator within 90 days, and has an extra 30 days to provide alternative assurance.

- In the first set of financial test criteria for liability coverage **alone**, the owner or operator does not have to meet certain financial ratios (i.e., of LIABILITY to NET WORTH, NET INCOME to

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[1] To avoid needless duplication of information in this manual, the reader is referred to Chapter VII of the manual for **Financial Assurance for Closure and Post-Closure Care**.

liabilities, or **CURRENT ASSETS** to **CURRENT LIABILITIES**). In this respect, the test is less stringent than the test for closure or post-closure care financial assurance.

- The financial test may be used in combination with an insurance policy to cover the requirements for liability coverage. However, closure or post-closure care financial assurance requirements for individual closure or post-closure cost estimates must be completely met by the financial test if it is used at all.

The regulations pertaining to the RCRA financial test for liability coverage are as follows:

EXHIBIT III-1
RCRA FINANCIAL TEST REGULATIONS

Topic	Interim Status	Permitted Facilities
Coverage for sudden accidental occurrences by financial test	40 CFR §265.147(a)(2)	40 CFR §264.147(a)(2)
Coverage for nonsudden accidental occurrences by financial test	40 CFR §265.147(b)(2)	40 CFR §264.147(b)(2)
Required Wording of Letter from Chief Financial Officer	40 CFR §264.151(g)	40 CFR §264.151(g)

Source: Title 40, **Code of Federal Regulations** (CFR).

A. RESPONSIBILITIES OF THE OWNER OR OPERATOR

This section specifies the requirements of the financial test for owners or operators. A summary checklist is provided as Attachment III-1.

1. **Form and Amount of Coverage**. The financial test may be used to cover the requirements for **SUDDEN ACCIDENTAL OCCURRENCES, NONSUDDEN ACCIDENTAL OCCURRENCES**, or both in combination. The financial test is always applied to the **ANNUAL AGGREGATE AMOUNTS** of the liability coverage requirements, which are $2 million per year for sudden occurrences, $6 million

per year for nonsudden occurrences, or $8 million per year in combination. Any portion of the total annual aggregate liability coverage requirements may be satisfied by the financial test, but liability insurance must be obtained for the remainder. The financial test calculations are based only on the portion of liability coverage requirements not covered by insurance, and if applicable, the amount of any closure or post-closure cost estimates covered by the test.

2. Qualifications for the Financial Test. The year-end financial statements of the owner or operator must be AUDITED by an independent CERTIFIED PUBLIC ACCOUNTANT. If the accountant gives an ADVERSE OPINION or a DISCLAIMER OF OPINION of the FINANCIAL STATEMENTS, the firm cannot qualify for the financial test. Furthermore, if the accountant gives a QUALIFIED OPINION of the financial statements, the Regional Administrator may disallow the use of the financial test. If this occurs, the owner or operator must provide evidence of insurance within 30 days after notification of disallowance. See Section III-B, **Regional Office Responsibilities**, for more information on accountants' opinions, and under what circumstances the Regional Administrator would disallow use of the financial tests because of a Qualified Opinion.

The financial test requirements may be satisfied by meeting either of two alternative sets of financial test criteria. Exhibit III-2 shows the alternative test requirements for liability coverage alone. Exhibit III-3 shows the alternative test requirements for liability coverage and closure or post-closure care financial assurance combinations.

For liability coverage alone, the two alternatives have a number of points in common, but one important difference: Alternative 1 requires the firm to have a certain amount of NET WORKING CAPITAL relative to the annual aggregate liability coverage requirements. Alternative 2 requires that the firm have an INVESTMENT GRADE BOND RATING. Both tests require the owner or operator to have a certain amount of TANGIBLE NET WORTH and U.S. ASSETS relative to annual aggregate liability coverage and a minimum absolute level of tangible net worth ($10 million).

When the financial test is used to cover **both** liability coverage and closure or post-closure care requirements, the sum of the annual aggregate liability coverage and the closure or post-closure cost estimates must be considered to satisfy test criteria. Exhibit III-3 shows that the two alternative sets of criteria have a number of points in common, but now have a second important difference. Alternative 1 requires that firms demonstrate financial soundness by passing at least two of three financial ratios, **as well as** requiring a certain amount of working capital relative to the sum of the total liability coverage plus closure and post-closure costs. Alternative 2 still only requires an investment grade bond rating. As before, both tests require the owner or operator to have a certain amount of net worth and U.S. assets relative to the sum of total coverage, and a minimum absolute level of net worth ($10 million).

EXHIBIT III-2

ALTERNATIVE SETS OF FINANCIAL TEST CRITERIA FOR SATISFYING LIABILITY COVERAGE REQUIREMENTS

Different Provisions

Alternative I (must meet A, B, and C)	Alternative II (must meet A, B, C, and D)
A. Meet both of the following tests:	A. A current rating for the most recent bond issuance of either:
(i) NET WORKING CAPITAL at least 6 times annual aggregate liability coverage requirements; and	(i) AAA, AA, A, BBB, as issued by Standard and Poor's; or
	(ii) Aaa, Aa, A, Baa as issued by Moody's.

Identical Provisions

(ii) TANGIBLE NET WORTH at least 6 times annual aggregate liability coverage requirements	B. Tangible net worth at least 6 times annual aggregate liability coverage requirements.
B. Tangible net worth of at least $10 million.	C. Tangible net worth of at least $10 million.
C. Meet one of the following tests:	D. Meet one of the following tests:
(i) ASSETS in the U.S. amounting to at least 90 percent of total assets; or	(i) assets in the U.S. amounting to at least 90 percent of total assets; or
(ii) ASSETS in the U.S. amounting to at least 6 times annual aggregate liability coverage requirements.	(ii) assets in the U.S. amounting to at least 6 times annual aggregate liability coverage requirements.

Note: See glossary for definition of terms.

Source: Code of Federal Regulations, Title 40, Part 265.147(f) and 151(g) (interim status).
264.147(f) and 151(g) (permitted facility).

EXHIBIT III-3

ALTERNATIVE SETS OF FINANCIAL TEST CRITERIA
FOR SATISFYING LIABILITY COVERAGE AND CLOSURE OR POST-CLOSURE CARE REQUIREMENTS

Different Provisions

Alternative I (must meet A, B, C, and D)	Alternative II (must meet A, B, C, and D)
A. Meet two of the following three tests:	A. A current rating for the most recent bond issuance of either:
(i) TOTAL LIABILITIES/NET WORTH less than 2.0;	(i) AAA, AA, A, BBB, as issued by Standard and Poor's; or
(ii) SUM OF NET INCOME plus depreciation, and amortization/ total liabilities greater than 0.1;	
(iii) CURRENT ASSETS/CURRENT LIABILITIES greater than 1.5.	(ii) Aaa, Aa, A, Baa as issued by Moody's.
B. Meet both of the following tests:	
(i) NET WORKING CAPITAL at least 6 times the sum of current closure and post-closure cost estimates and annual aggregate liability coverage requirements; and	

Identical Provisions

(ii) TANGIBLE NET WORTH at least 6 times the sum of current closure and post-closure cost estimates and annual aggregate liabiity coverage requirements.	B. Tangible net worth at least 6 times the sum of current closure and post-closure cost estimates and annual aggregate liability coverage requirements.
C. Tangible net worth of at least $10 million.	C. Tangible net worth of at least $10 million.
D. Meet one of the following tests:	D. Meet one of the following tests:
(i) ASSETS in the U.S. amounting to at least 90 percent of total assets; or	(i) assets in the U.S. amounting to at least 90 percent of total assets; or
(ii) ASSETS in the U.S. amounting to at least 6 times the sum of current closure and post-closure cost estimates and annual aggregate liability coverage requirements.	(ii) assets in the U.S. amounting to at least 6 times the sum of current closure and post-closure estimates and annual aggregate liability coverage requirements.

Note: See glossary for definition of terms.

Source: Code of Federal Regulations, Title 40, Part 265.147(f) and 151(g) (interim status).
264.147(f) and 151(g) (permitted facility).

3. Arrangements for the Financial Test. The only outside arrangements that must be made for the financial test are with an independent certified public accountant. Because the vast majority of owners or operators who will select the financial test will already have their financial statements independently audited, no explanation of how to select an independent accountant is necessary.

4. Submission of Documents to EPA. To use the financial test as a means of satisfying financial requirements, owners or operators must submit the following:

a) **Chief Financial Officer's Letter Including Data from Audited Financial Statements.** The owner or operator must submit to the Regional Administrator a letter signed by its CHIEF FINANCIAL OFFICER. The letter must be worded and include the data as specified in the regulations in force on the date of submission. A copy of the required wording as it currently appears in the regulations is included as Attachment III-3.

The letter must specify the EPA Identification Number, name, and address of all facilities covered by the financial test. If the owner or operator is using the financial test to establish financial assurance for closure or post-closure care as well as liability coverage, the same letter must be used for both purposes.

Owners or operators using the financial test to demonstrate satisfaction of both liability coverage **and** closure or post-closure care financial requirements must fill in four paragraphs regarding facilities and closure and/or post-closure cost estimates. The owner or operator must list in the:

- First paragraph, all the owner's or operator's facilities which are assured for closure or post-closure care by the financial test in an EPA-administered financial responsibility program.
- Second paragraph, all facilities owned or operated by subsidiaries which the owner or operator has guaranteed through the corporate guarantee for closure or post-closure care in an EPA-administered financial responsibility program.
- Third paragraph, facilities of the owner or operator or its subsidiaries for which the owner or operator has demonstrated financial assurance for closure or post-closure care by satisfaction of a financial test or corporate guarantee in a State program of financial responsibility that has received INTERIM OR FINAL AUTHORIZATION.

- Fourth paragraph, all the owner's or operator's facilities for which financial assurance for closure or post-closure care has not been demonstrated to EPA or a State because they are located in a state with interim authorization, but without effective financial responsibility requirements.

For each facility listed in one of the preceding paragraphs, the owner or operator must include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Each cost estimate must be identified as for either closure or post-closure care.

The chief financial officer may **not** add closure or post-closure cost estimates included as liabilities to tangible net worth if liability coverage alone is being satisfied by the financial test. The cost estimates may be included as liabilities only if the financial test is being used for closure and post-closure care assurance.

b) **Accountant's Report on Examination.** The owner or operator must submit a copy of the independent certified public accountant's **REPORT ON EXAMINATION** of the year-end financial statements for the latest complete fiscal year. This is the standard report containing the auditor's opinion which accompanies the annual report. There is no EPA required form for this report, but examples are given in Chapter VII of the manual for **Financial Assurance for Closure and Post-Closure Care.**

c) **Special Report.** The owner or operator must submit a **SPECIAL REPORT** from an independent certified public accountant to the Regional Administrator which contains the accountant's confirmation that the financial data contained in the letter from the chief financial officer can be derived from the independently audited year-end financial statements and footnotes for the latest complete fiscal year. The special report must also state that no matters came to the attention of the independent certified public account which caused him to believe that the information in the chief financial officer's letter should be adjusted. There is no required form for the special report, but a sample special report is shown in Attachment III-4.

5. Updating and Maintaining Coverage. The owner or operator must submit updated information annually within 90 days of the close of the owner's or operator's fiscal year. The owner or operator must satisfy all of the financial test criteria at each annual update. As with the initial submission, the updated information consists of the letter from the Chief Financial Officer, the accountant's report on examination, and the special report from the accountant. The letter from the chief financial officer must exactly follow the wording shown in Attachment III-3.

If the year-end financial statements indicate that the owner or operator is still qualified to use the financial test, but can no longer completely cover the amount of the annual aggregate liability coverage requirements, the

firm may wish to combine liability insurance with the financial test to provide the necessary coverage. This situation would occur if the firm could not meet requirement B of Exhibits III-2 and III-3, but could meet all other financial test requirements. However, if the year-end financial statements indicate that the financial status of the owner or operator has changed so that it no longer can satisfy the other requirements of the financial test, the owner or operator must obtain insurance for the entire amount of annual aggregate liabilities. This situation would occur if the firm could not meet requirements A or C or D of Exhibits III-2 or III-3, or any of the other financial test requirements. In either case, evidence of insurance must be submitted to the EPA Regional Administrator within 90 days after the close of the firm's fiscal year.

The owner or operator must inform the Regional Administrator within 10 days after being named as a debtor in a bankruptcy proceeding.

6. Release from RCRA Liability Coverage Requirements. To obtain release from the liability coverage requirements, the owner or operator must submit to the Regional Administrator certification that all covered facilities have been closed in accordance with the specifications in each approved closure plan. The certification must be supplied by both the owner or operator and by an **independent registered professional engineer.**

7. Permitted Facility Requirements. A new **PERMITTED FACILITY** must submit the letter from the chief financial officer and the reports from an independent certified public accountant at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. There is no provision for extending this deadline to accomodate firms whose fiscal year ends ninety days before. Requirements for **EXISTING FACILITIES** are described in Section A.8 of Chapter II.

B. REGIONAL OFFICE RESPONSIBILITIES

This section outlines the duties of the EPA Regional Office in reviewing the submission of financial data and handling subsequent contingencies. A summary checklist is provided by Attachment III-2 at the end of this chapter.

1. Qualifications of Accountant. EPA personnel should first confirm that the independent accountant responsible for preparing the report on examination and special report is licensed by a state as a certified public accountant. Staff can check the credentials of the accountant by contacting the State Board of Accountancy in the state where the accountant resides. The State Boards are listed in Appendix B-4 of the manual for **Financial Assurance for Closure and Post-Closure Care.**

2. Conformity to Other Requirements

a) **Chief Financial Officer's Letter.** EPA personnel should review the letter from the chief financial officer and verify that it is complete and accurate. The firm should be contacted to verify that the signatory of the

letter is the chief financial officer -- the person required to sign SEC **FORM 10-K** or the equivalent. The financial test criteria should be applied to the annual aggregate liability coverage requirements, which are $2 million per year for sudden accidental occurrences, $6 million per year for nonsudden accidental occurences, or $8 million per year in combination, or the portion thereof that is not covered by liability insurance. If any of the criteria for the financial test are not met, or if anything is missing from the letter, the Regional Administrator should immediately notify the owner or operator and ensure that liability insurance is obtained or proper submissions made.

If the financial test is also being used to provide financial coverage of closure or post-closure costs, the same letter from the chief financial officer must be submitted for both purposes. In this case, the criteria of the financial test are applied to the sum of the annual aggregate liability coverage requirements and the closure or post-closure cost estimates covered by the financial test.

If there is any reason to question the validity of the financial data, the Regional Administrator may want to request the audited financial statements from the firm, or obtain the Form 10-K from the U.S. Securities and Exchange Commission (SEC) (see Section C, **Sources of Further Information**). **MOODY'S** or **STANDARD AND POOR'S** bond guides may be checked to verify that the bond ratings are as claimed. Major libraries (public and university) as well as libraries in Regional Offices of the SEC should have current editions of the bond rating guides. The reference staff of any library will know where the nearest copies are held.

To assist in future evaluations of the owner's or operator's submissions, it is strongly recommended that the Regional staff establish a file of data taken directly from the chief financial officer's letter for each owner or operator. Exhibit III-4 is an example of such a file. The use of the file will be described in Section 3 below.

b) **Review of the Accountant's Opinion of the Financial Statements.** EPA personnel should next determine what kind of opinion was expressed in the accountant's report on examination: **UNQUALIFIED OPINION**, Qualified Opinion, or Adverse Opinion; or if there was a Disclaimer of Opinion.

An Unqualified Opinion can be recognized because it consists of two short paragraphs expressing no doubts about the financial statements. See Attachment VII-4 of the manual for **Financial Assurance for Closure and Post-Closure Care** for two examples of Unqualified Opinions.

EXHIBIT III-4

SAMPLE FILE ON OWNER OR OPERATOR

DATE OF
CLOSE OF FISCAL YEAR _____

Owner/Operator _____

	Initial Year	Second Year	Third Year
1. Annual Aggregate Liability Coverage Requirements and total closure and post-closure cost estimates if applicable			
2. Bond Rating			
3. Total Liabilities			
4. Tangible Net Worth			
5. Net Worth			
6. Current Assets			
7. Current Liabilities			
8. Net Working Capital			
9. Sum of Net Income, Depreciation, Depletion, and Amortization			
10. Total assets in U.S.			
11. Total assets			
12. Line 4 divided by Line 1			
13. Line 8 divided by Line 1			
14. Line 10 divided by Line 11			
15. Line 10 divided by Line 1			

EXHIBIT III-4 (continued)

SAMPLE FILE ON OWNER OR OPERATOR

	Initial Year	Second Year	Third Year
16. Line 9 divided by Line 3			
17. Line 6 divided by Line 7			
18. Line 3 divided by Line 5			
19. Qualified Auditor's Opinion?			

NOTES:

[Adverse Business Press Releases, Competitive Problems, Bond Ratings Drop]

Qualified Opinions express some reservations by the accountant that the financial statements fairly or completely represent the financial condition and operating results of the owner or operator. Qualified Opinions are easily recognized because the final paragraph of the opinion will usually begin with "In our opinion, **subject to** ...", or "In our opinion, **except for**...."

"Subject to" Qualified Opinions are given when the accountant believes the financial statements only represent fairly the economic condition of the owner or operator subject to the outcome of certain unforeseeable events. Examples of "Subject to" Qualified Opinions are given in Attachments VII-7, VII-11, and VII-12 of the manual for **Financial Assurance for Closure and Post-Closure Care.**

"Except for" Qualified Opinions are given when the accountant believes the financial statements, except for certain qualifications, represent fairly the economic condition of the owner or operator. The phrase "except for" appears somewhere in the opinion. Examples of "Except for" Qualified Opinions are given in Attachments VII-8, VII-9, and VII-10 of the manual for **Financial Assurance for Closure and Post-Closure Care**.

An Adverse Opinion is given when the accountant believes that the financial statements do not present fairly the financial condition of the owner or operator. The auditor will clearly state this in the final paragraph of the opinion. An example of an adverse opinion is given in Attachment VIII-6 of the manual for **Financial Assurance for Closure and Post-Closure Care.**

A Disclaimer of Opinion means that the accountant cannot express an opinion on the financial statements of the owner or operator. A report on examination will still be given, but the final paragraph will state that an opinion could not be expressed on the financial statements. An example of a disclaimer of opinion is given in Attachment VII-7 of the manual for **Financial Assurance for Closure and Post-Closure Care**.

Some examples of conditions likely to result in a Qualified Opinion, Adverse Opinion, and Disclaimer of Opinion are given in Exhibit III-5.

When evaluating accountants' opinions, EPA personnel should:

1. Immediately "pass" an owner or operator if it has received an Unqualified Opinion and meets all the other requirements. Probably at least 90% of the owners and operators who use the financial test will have Unqualified Opinions. Accountants generally render Unqualified Opinions to most large companies. Since owners or operators must have a tangible net worth of at least $10 million to qualify for the financial test, most applicants will fall into this category.

2. Immediately disqualify an owner or operator from the financial test if it has received either (1) an Adverse Opinion, or (2) a Disclaimer of Opinion. None of the owners or operators should have these types of

EXHIBIT III-5

CONDITIONS LIKELY TO RESULT IN A QUALIFIED OPINION, ADVERSE OPINION AND DISCLAIMER OF OPINION

CONDITION			
VIOLATION OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP)	UNCERTAINTY		SCOPE LIMITATIONS
	"Subject To" Qualified Opinion		
	Internal Matters	External Matters	
"Except for" Qualified Opinion - Violation is not overwhelming or pervasive to financial statements as a whole. o Lease obligations that were not capitalized that auditor thinks should have been capitalized o Omission of disclosure that the auditor thinks should be included	o Loss of management or other key personnel o Negative trends recurring operating losses, negative cash flow o Work stoppages o Uneconomical long-term commitments	o Legal proceedings o Legislation o Loss of key franchise, license, or patent o Loss of a principal customer or supplier o Uninsured catastrophes	"Except for" Qualified Opinion o Segments of inventory not observed at beginning or end of year (not so significant as to require a disclaimer). o Joint ventures were not audited.
Adverse Opinion - Violation is overwhelming or pervasive to financial statements as a whole. o A large company uses the cash basis rather than the accrual basis of accounting and thus, does not match expenses with revenues for the accounting period.	Disclaimer of Opinion o It is impossible to determine the future operational activity of company or the effect of material uncertainties.		Disclaimer of Opinion o The accounting/operating systems are so unreliable that an audit cannot be performed.

opinions. The regulations explicitly disqualify owners or operators from the financial test if they have either of these two types of opinions. In addition, although not specifically addressed in the regulations, a "subject to" type of Qualified Opinion based on a "going concern" issue is generally considered so serious that any firm receiving one should be disqualified from the financial test. See Attachment VII-8 of the manual for **Financial Assurance for Closure and Post-Closure Care** for an example of a "subject to" Qualified Opinion based on a "going concern" issue. If disqualified, the owner or operator should be notified immediately. The Regional Administrator must ensure that evidence of insurance for liability coverage requirements is submitted within 30 days after notification of disqualification.

3. Conduct further investigations if an owner or operator received any other type of Qualified Opinion (either an "except for" or a "subject to"). A small number of owners or operators, perhaps 10%, will have Qualified Opinions. Most of the review effort should be directed toward owners or operators falling into this category. The rest of this section provides guidance on how to evaluate these opinions.

EPA Staff should undertake the following four steps whenever an owner or operator has a Qualified Opinion (either an "except for" or "subject to," **excluding** those rendered on the basis of a "going concern" issue):

1. The owner or operator should be asked to submit a copy of the latest financial statements. Alternatively, a copy of the latest Form 10-K could be obtained from the SEC.

2. The opinion rendered by the accountant should be thoroughly understood in the context of the financial statements:

- If it is an "except for" opinion, the EPA staff should determine if the part of the statements which gives rise to the "except for" qualification has any bearing on the owner's or operator's ability to pass the financial test; or

- If it is a "subject to" opinion, EPA staff should determine the likelihood of the occurrence of the event the accuracy of the financial statements are "subject to", and the importance of the event's occurrence or nonoccurrence on the owner's or operator's ability to pass the financial test.

3. If not enough information is available in the opinion or financial statements to make a satisfactory decision, the firm should be required to submit a written explanation of why the qualification should not be grounds for disallowal of the use of the financial test.

4. If the matter is still unresolved, contact EPA headquarters for additional assistance.

When the Regional Administrator disallows use of the financial test because of a qualified opinion, the owner or operator must provide evidence of insurance within 30 days after notification of disallowance.

c) **Special Report from Auditor.** EPA personnel should review the auditor's confirmation of the letter from the chief financial officer, and verify that the auditor has reviewed the data specified in the chief financial officer's letter and was able to trace the data back to figures found in the owner's or operator's independently audited, year-end financial statements for the latest fiscal year. It should be noted that the auditor's confirmation does not pass judgment on whether the owner or operator, is economically viable, nor does it assess the value of the financial data contained in the letter. No specific form is required for the auditors special report. However, Attachment III-4 provides an example of an auditor's confirmation.

3. Recordkeeping and Tracking Systems. As financial information is received, relevant data should be recorded and verified. The code for the financial test and the amount of the cost estimates for which financial assurance for closure or post-closure care and liability coverage are provided by the financial test should be entered into the HWDMS. Regional Office staff could keep a file on each submitting firm, such as the one shown in Exhibit III-4 (pp. III-10 and 11) which summarizes key financial data. The recordkeeping and tracking system should be used to keep track of all owners or operators, with most of the effort focused on firms that:

- Fail to submit chief financial officer's letter within 90 days after the close of their fiscal year;
- Barely pass the criteria of the financial test; and
- Receive adverse business publicity.

Section 5 below provides more detail on type of firms that should be monitored closely.

4. Variance Requests. Chapter II, Section B.4 provides guidance on how the Regional Administrator should handle VARIANCE requests.

5. Updating and Maintaining Coverage. The Regional Administrator must re-evaluate each owner or operator every year following the same procedures each time.

a) **Reviewing Annual Submissions.** Within 90 days after the close of every fiscal year, the owner or operator must resubmit updated information including the letter from the chief financial officer, a copy of the accountant's report on examination of the year-end financial statements, and the special audit report. Failure to do so is an indication of financial deterioration of the submitting firm, thus late submissions should be monitored closely. All the financial test criteria must be met; if not the owner or operator must submit evidence of insurance to the Regional

Administrator within 90 days after the close of the fiscal year for which year-end financial data show the owner or operator no longer meets the test requirements.

b) **On-going Monitoring**. The Regional Office staff can monitor the business press for adverse news about owners or operators. Ideally, an on-line computerized business data base service such as DIALOG could be used for this purpose. Through the computerized data base, or manually, the **Business Periodical Index** and the **F&S Corporate Index** can be searched using the firm's name as a "keyword," for:

- Omission of a dividend;
- Delisting from an exchange;
- Suspended trading;
- Mergers, Acquisitions, Divestitures;
- Financial losses;
- Competitive problems;
- Bankruptcy proceedings;
- Decreases in bond ratings; and
- Sharp stock price decreases.

Regional Offices should coordinate their review procedures with EPA Headquarters. Approaches to centralizing some review procedures for the financial test are currently being studied.

c) **Further Investigation**. Under the regulations for financial assurance for closure or post-closure care costs, the Regional Administrator can obtain reports of financial condition from the owner or operator if he believes that the firm may no longer meet the financial test criteria. Based on the requested reports or any other material, the Regional Administrator may then disallow use of the financial test and require that alternate coverage be provided.

The liability coverage regulations do not specifically grant the Regional Administrators the same power to obtain information from owners or operators or disallow use of the financial test. However, if the tests are used to cover both liability **and** closure/post-closure care financial requirements, the Regional Administrator would still retain these powers, but only in reference to closure or post-closure care assurance. In the final analysis, this means that the Regional Administrator can disallow use of the financial test for closure or post-closure costs at any time during the year, but for the liability coverage requirements only at the end of the owner's or operator's fiscal year.

6. Release from Requirements. The Regional Administrator should release the owner or operator from the liability coverage requirements if proper certification of closure for all facilities has been submitted from both owner or operator and an independent registered professional engineer. The certifications must state that the facility has been closed in accordance with the specifications in its closure plan. Owners or operators do not need

to demonstrate liability coverage for facilities correctly certified as properly closed, however, owners or operators are not released from the liability coverage requirements until all their facilities have been so certified.

7. **Permitted Facility Requirements.** For new facilities the financial test submissions for sudden coverage, and nonsudden coverage if applicable, must be submitted to EPA at least 60 days before the initial receipt of waste. For further information on permitted facility requirements see Section B.8 of Chapter II.

C. SOURCES OF FURTHER INFORMATION

For further information on the financial test, **Background Document for the Financial Test and Municipal Revenue Test**, September 16, 1981, including **Appendix A - Evaluating the Effectiveness of Alternative Financial Tests**, September 4, 1981 and **Appendix B - Cost Analysis for a Financial Test**, September 4, 1981. See also **Background Document, Financial Test for Liability Coverage** including **Appendix: Cost Analysis for a Financial Test for Liability Coverage**, April 9, 1982.

Standard reference books are listed in Section D of Chapter VII of the manual for **Financial Assurance for Closure and Post-Closure Care.**

To obtain Form 10-K or 10-Q reports from the SEC, contact: The U.S. Securities and Exchange Commission's Public Reference Room, located at 1100 L Street, N.W., Washington, D.C. (telephone: (202) 523-5506). Copies of reports can be obtained by mail.

Finally, the American Institute of Certified Public Accountants, 1620 Eye Street, N.W., Washington, D.C. 20006, (202) 872-8190 may be of assistance.

ATTACHMENT III-1

RCRA LIABILITY COVERAGE FINANCIAL TEST CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *	
(2)	—— Owner or operator's financial statements are audited by an independent certified public accountant.
(2)	—— If a notice of disallowance is issued because of a qualified opinion in the report on examination, submit evidence of insurance by 30 days after notification.
"	—— Owner or operator meets requirements of the appropriate Alternative I or Alternative II tests, depending on whether or not the tests are used to satisfy closure or post-closure care costs and liability coverage requirements in combination.
(4)	—— Submit letter from chief financial officer. Use same letter to cover both liability coverage and closure or post-closure care requirements, if applicable.
"	—— Submit independent CPA's report on examination of year-end financial statements.
"	—— Submit independent CPA's special report confirming data in chief financial officer's letter.
"	—— Request extension of initial reporting deadline if fiscal year ends less than 90 days before effective date of regulations.
(5)	—— Submit no later than 90 days after the end of every fiscal year an updated:
	—— Chief financial officer's letter
	—— Independent CPA's report on examination of year-end financial statements
	—— Independent CPA's confirmation of data in chief financial officer's letter
"	—— Submit evidence of liability insurance coverage to EPA within 90 days after end of fiscal year if owner or operator no longer meets requirements of financial test.
"	—— Notify Regional Administrator within 10 days after the commencement of a bankruptcy proceeding.

* Numbers correspond to the paragraphs in Section A.

ATTACHMENT III-2

RCRA LIABILITY COVERAGE FINANCIAL TEST CHECKLIST FOR REGIONAL OFFICES

The Regional Administrator should ensure that:

Paragraph Number *

(1) —— The independent accountant is certified by the State Board of Accountancy in the state where the accountant resides.

(2) —— The required criteria are satisfied in the chief financial officer's letter. The same letter is used to cover both liability coverage and closure or post-closure care financial requirements, if applicable.

" —— The chief financial officer's letter is signed.

" —— Independent auditor's report on examination of year-end financial statements is reviewed:

—— "Pass" owners or operators with unqualified opinions who otherwise qualify.

—— Immediately disqualify owners or operators with disclaimers of opinion, adverse opinions, or "subject to" qualified opinions based on a "going concern" issue.

—— Submit to further investigation owners or operators with any other type of qualified opinion.

" —— Owners or operators that are disqualified because of a qualified opinion are notified, and evidence of insurance submitted within 30 days after notification.

" —— The independent auditor's special report, confirming the chief financial officer's letter is acceptable.

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* Numbers correspond to paragraphs in Section B.

ATTACHMENT III-2 (continued)

RCRA LIABILITY COVERAGE FINANCIAL TEST CHECKLIST FOR REGIONAL OFFICES

Paragraph Number *	
(3) ——	Relevant data is recorded, and if appropriate, entered into HWDMS.
" ——	Financial information is verified.
(5) ——	The following are submitted no later than 90 days after the close of each fiscal year:
	—— Updated chief financial officer's letter
	—— Independent auditor's report on examination of year-end financial statements.
	—— Updated special report

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* Numbers correspond to paragraphs in Section B.

ATTACHMENT III-3

REQUIRED WORDING FOR LETTER FROM CHIEF FINANCIAL OFFICER 40 CFR 264.51(g)

Letter from Chief Financial Officer (to demonstrate liability coverage or to demonstrate both liability coverage and assurance of closure or post-closure care).

[Address to Regional Administrator of every region in which facilities for which financial responsibility is to be demonstrated through the financial test are located.]

I am the chief financial officer of [owner's or operator's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in Subpart H of 40 CFR Parts 264 and 265.

[Fill out the following paragraphs regarding facilities and liability coverage. For each facility, include its EPA Identification Number, name, and address].

The owner or operator identified above is the owner or operator of the following facilities for which liability coverage is being demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265:

_____.

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following four paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The owner or operator identified above owns or operates the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure estimates covered by the test are shown for each facility:

   _____.

ATTACHMENT III-3 (continued)

REQUIRED WORDING FOR LETTER FROM CHIEF FINANCIAL OFFICER 40 CFR 264.51(g)

2. The owner or operator identified above guarantees, through the corporate guarantee specified in Subpart H of 40 CFR Parts 264 and 265, the closure and post-closure care of the following facilities owned or operated by its subsidiaries. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:

   _____.

3. In States where EPA is not administering the financial requirements of Subpart H of 40 CFR Parts 264 and 265, this owner or operator is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:

   _____.

4. The owner or operator identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is **not** demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

   _____.

This owner or operator [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this owner or operator ends on [month, day]. The figures for the following items marked with an asterisk are derived from this owner's or operator's independently audited, year-end financial statements and footnotes for the latest completed fiscal year, ended [date].

[Fill in part A if you are using the financial test to demonstrate coverage **only** for the liability requirements.]

ATTACHMENT III-3 (continued)

REQUIRED WORDING FOR LETTER FROM CHIEF FINANCIAL OFFICER ALTERNATIVE I

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of §§264.147 or 265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of §§264.147 or 265.147 are used.]

ALTERNATIVE I

1.	Amount of annual aggregate liability coverage to be demonstrated	$_____
*2.	Current assets	$_____
*3.	Current liabilities	$_____
4.	Net working capital (line 2 minus line 3)	$_____
*5.	Tangible net worth	$_____
*6.	If less than 90% of assets are located in the U.S., give total U.S. assets	$_____

		YES	NO
7.	Is line 5 at least $10 million?	___	___
8.	Is line 4 at least 6 times line 1?	___	___
9.	Is line 5 at least 6 times line 1?	___	___
*10.	Are at least 90% of assets located in the U.S.? If not, complete line 11.	___	___
11.	Is line 6 at least 6 times line 1?	___	___

ALTERNATIVE II

1.	Amount of annual aggregate liability coverage to be demonstrated	$_____
*2.	Current bond rating of most recent issuance and name of rating service	_____
3.	Date of issuance of bond	_____
4.	Date of maturity of bond	_____

ATTACHMENT III-3 (continued)

Part A (continued)

ALTERNATIVE II (continued)

*5.	Tangible net worth	$_____
*6.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.)	$_____

		YES	NO
7.	Is line 5 at least $10 million?	___	___
8.	Is line 5 at least 6 times line 1?	___	___
*9.	Are at least 90% of assets located in the U.S.? If not, complete line 10.	___	___
10.	Is line 6 at least 6 times line 1?	___	___

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage **and** closure or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(i) of §§264.143 or 264.145 and (f)(1)(i) of §264.147 are used or if the criteria of paragraphs (e)(1)(i) of §§265.143 or 265.145 and (f)(1)(i) of §265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(ii) of §§264.143 or 264.145 and (f)(1)(ii) of §264.147 are used or if the criteria of paragraphs (e)(1)(ii) of §§265.143 or 265.145 and (f)(1)(ii) of §265.147 are used.]

ALTERNATIVE I

1.	Sum of current closure and post-closure cost estimates [total of **all** cost estimates listed above]	$_____
2.	Amount of annual aggregate liability coverage to be demonstrated	$_____
3.	Sum of lines 1 and 2	$_____
*4.	Total liabilities (if any portion of the closure or post-closure cost estimates is included in your total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 5 and 6)	$_____

ATTACHMENT III-3 (continued)

Part B (continued)

ALTERNATIVE I (continued)

*5.	Tangible net worth	$_____
*6.	Net worth	$_____
*7.	Current assets	$_____
*8.	Current liabilities	$_____
*9.	Net working capital [line 7 minus line 8]	$_____
*10.	The sum of net income plus depreciation, depletion, and amortization	$_____
*11.	Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)	$_____

		YES	NO
12.	Is line 5 at least $10 million?	____	____
13.	Is line 5 at least 6 times line 3?	____	____
14.	Is line 9 at least 6 times line 3?	____	____
*15.	Are at least 90 percent of assets located in the U.S.? If not, complete line 16.	____	____
16.	Is line 11 at least 6 times line 3?	____	____
17.	Is line 4 divided by line 6 less than 2.0?	____	____
18.	Is line 10 divided by line 4 greater than 0.1?	____	____
19.	Is line 7 divided by line 8 greater than 1.5?	____	____

ATTACHMENT III-3 (continued)

Part B (continued)

ALTERNATIVE II

1.	Sum of current closure and post-closure cost estimates [total of all cost estimates listed above]	$_____
2.	Amount of annual aggregate liability coverage to be demonstrated	$_____
3.	Sum of lines 1 and 2	$_____
4.	Current bond rating of most recent issuance and name of rating service	_____
5.	Date of issuance bond	_____
6	Date of maturity of bond	_____
*7.	Tangible net worth (if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your financial statements, you may add the amount of that portion to this line)	$_____
*8.	Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.)	$_____

		YES	NO
9.	Is line 7 at least $10 million?	___	___
10.	Is line 7 at least 6 times line 3?	___	___
*11.	Are at least 90% of assets located in the U.S.? If not, complete line 12.	___	___
12.	Is line 8 at least 6 times line 3?	___	___

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(g) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

ATTACHMENT III-4

EXAMPLE OF AUDITOR'S SPECIAL REPORT, CONFIRMATION OF CHIEF FINANCIAL OFFICER'S LETTER

We have examined the financial statements of XYZ Company for the year ended December 31, 19X1, and have issued our report thereon dated March 15, 19X2. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The Company has prepared documents to demonstrate its financial responsibility under the Environmental Protection Agency's financial assurance regulations, in compliance with 40 CFR 264 and 265, Subpart H. This letter is furnished to assist the Company in complying with these regulations and should not be used for other purposes.

The attached schedule reconciles the specified information furnished in the chief financial officer's letter in response to the regulations with the Company's financial statements. In connection therewith, we have:

1. Agreed the amounts in the column "per financial statements" with amounts contained in the Company's financial statements for the year ended December 31, 19X1.

2. Agreed the amounts in the column "per chief financial officer's letter" to the Letter prepared in response to the regulations.

3. Recomputed the totals and percentages.

Because the above procedures do not constitute an examination made in accordance with generally accepted auditing standards, we do not express an opinion on any amounts or items referred to above. In connection with the procedures referred to above, no matters came to our attention that caused us to believe the Schedule should be adjusted.

ATTACHMENT III-4 (continued)

XYZ COMPANY

LIABILITY COVERAGE REQUIREMENTS

YEAR ENDED DECEMBER 31, 19XI

SCHEDULE RECONCILING AMOUNTS CONTAINED IN THE CHIEF FINANCIAL OFFICER'S LETTER FURNISHED IN RESPONSE TO 40 CFR 264 AND 265, SUBPART H TO AMOUNTS CONTAINED IN THE FINANCIAL STATEMENTS

Line number in CFO's Letter		Per Financial Statements	Per CFO's Letter
2	Total current assets	X	X
3	Total current liabilities	X	X
4	Net working capital (2 - 3)	XX	XX
5	Net Worth	XX	
	Less: Cost in excess of value of tangible assets acquired	X	
		XX	
	Tangible net worth		XX

[balance of schedule not illustrated]

[This illustrates the form of schedule which is contemplated. Details and reconciling items will differ in specific situations.]

IV. COMPLYING WITH LIABILITY COVERAGE REQUIREMENTS USING STATE MECHANISMS

As discussed in Section D of Chapter 1, owners or operators are subject to applicable state laws or regulations pertaining to liability coverage in addition to the Federal RCRA requirements. **This chapter only applies to facilities located in states where EPA is administering liability coverage requirements.**[1] The chapter explains how owners or operators of facilities in these states may satisfy Federal liability coverage requirements using state laws.

Owners or operators may satisfy the Federal RCRA liability coverage requirements by arranging for coverage under the authority of a state government in two ways. First, an owner or operator may provide assurance through a State-required liability coverage mechanism equivalent to those specified in the Federal RCRA requirements. Many states are expected to adopt the Federal requirements discussed in this manual or equivalent rules; in those cases, satisfaction of State requirements may be used to demonstrate compliance with RCRA requirements. Second, a state government or state fund may assume legal or financial responsibility for all or part of the potential liabilities of a facility. Such an assumption of liability, similarly, may satisfy all or a part of the RCRA liability coverage requirements.

Pertinent EPA regulations are listed below:

EXHIBIT IV-1

RCRA STATE LIABILITY COVERAGE MECHANISM REGULATIONS

Topic	Interim Status	Permitted Facilities
State-Required Mechanisms	40 CFR 265.149	40 CFR 264.149
State Assumption of Responsibility	40 CFR 265.150	40 CFR 264.150

Source: Title 40, **Code of Federal Regulations** (CFR).

[1] EPA interim status liability coverage regulations (40 CFR 265) do not apply in states that have received **PHASE I INTERIM AUTHORIZATION**, although RCRA standards (40 CFR 264) must be satisfied to receive a RCRA permit. States with **PHASE II INTERIM AUTHORIZATION** will administer their own liability coverage requirements for both **INTERIM STATUS** and **PERMITTED FACILITIES**. See Chapter 1, Section D for a discussion of the applicability of Federal and State requirements.

A. RESPONSIBILITIES OF THE OWNER OR OPERATOR

This section outlines the requirements for using State mechanisms to satisfy Federal rules and the responsibilities of owners or operators. Included as Attachment IV-1 is a checklist summarizing the requirements for owners or operators.

1. Satisfying State Requirements. Owners or operators must initially identify what State liability coverage requirements apply and whether or not the state itself assumes responsibility for liability claims. (See Exhibit IV-2.) State liability coverage requirements may not be identical to RCRA requirements, although the allowable mechanisms typically include liability insurance. The EPA is not currently aware of any instance where a state assumes legal responsibility for an owner's or operator's compliance with RCRA liability coverage requirements or assures that funds will be available from state sources to cover these requirements. EPA may propose to delete this option. EPA is currently developing a guidance on the issue of determination of equivalence of State financial responsibility mechanisms and State programs.

Because state laws and regulations are still being developed or promulgated, it is strongly suggested that owners and operators check with the appropriate state agency for the requirements in any particular state. See Appendix B-1 of the manual for **Financial Assurance for Closure and Post-Closure Care** for a list of state agencies. An owner or operator whose facility is located in any state with liability coverage requirements must satisfy both the State and Federal requirements. State and Federal officials encourage early and frequent contacts with agency staffs to discuss requirements. Similarly, an owner or operator will need to determine whether his facility is eligible for a State assumption of responsibility for liability coverage.

2. Submission of Required Information to EPA. To use a State-required mechanism to satisfy RCRA requirements, the owner or operator must submit to the Regional Office evidence of the establishment of the mechanism, such as a letter from the appropriate state agency, a copy of the **CERTIFICATE OF INSURANCE** or **ENDORSEMENT**, etc. The submission of evidence must be accompanied by a request that the State-required mechanism be considered acceptable for meeting the Federal RCRA liability coverage requirements. (See Attachments IV-3 through IV-5.) The submission must include the amount and types of coverage assured through the State mechanism as well as identifying information on each facility to be covered, including the facility's EPA Identification Number, name, and address. Additional information may be requested by the Regional Administrator in order to determine the mechanism's acceptability.

Some states may provide assurance of payment of all or part of liability coverage responsibilities. In order to take advantage of such laws to demonstrate compliance with RCRA liability coverage requirements, the owner or operator must submit two letters: (1) a letter from the appropriate state

EXHIBIT IV-2

STATE LIABILITY COVERAGE REQUIREMENTS AND ASSUMPTIONS OF RESPONSIBILITY AS OF JUNE 1, 1982 IN STATES WITHOUT INTERIM AUTHORIZATION AS OF SEPTEMBER 1, 1982

	Has Liability Coverage Requirements	Provides Assumption of Responsibility
Alaska	No	
Colorado	[3]	
District of Columbia	[1]	
Hawaii	[3]	
Idaho	No	
Michigan	*	
Minnesota	[1]	
Missouri	*	
Nevada	[3]	
New Jersey	*	[4]
New Mexico	[3]	
New York	*	
Ohio	No	
Puerto Rico	* [2]	
South Dakota	No	
Virgin Islands	*	
Washington	*	
West Virginia	[1]	
Wyoming	No	

---

* State has some provision for the item in question.

[1] Requirements have been drafted or proposed but not yet adopted.

[2] Some liability mechanism is required but the nature of the mechanism has not been specified.

[3] No regulations have yet been issued but some mechanism is required by state statute.

[4] A state compensation fund is available for property damage, not personal injury; however, the fund does not explicitly assume the liability of the owner or operator.

Source: ICF Incorporated.

agency describing the nature of the State's assumption of liability coverage responsibility, together with (2) a letter requesting that the State's assumption of responsibility be considered acceptable for fulfilling the RCRA liability coverage requirements. (See Attachment IV-3.) The letter from the state must include, or have attached, the following information: the facility's EPA Identification Number, name, address, and the amount of funds guaranteed by the state. The owner or operator may be required to submit additional information requested by the Regional Administrator.

3. Satisfying Federal Requirements. The owner or operator may need to supplement the State mechanism or guarantee in order to provide complete RCRA coverage. For example, a State liability coverage requirement may only provide for $500,000 coverage for SUDDEN and $1,000,000 for NONSUDDEN ACCIDENTAL OCCURRENCES. On the other hand, a state may require $1/$2 million in sudden coverage but have no requirement for nonsudden liability assurance. Or a state compensation fund may provide coverage only for PROPERTY DAMAGE claims, not BODILY INJURY. The owner or operator has the option of either increasing or supplementing the amount of funds available through the State-required mechanism or using additional RCRA mechanisms. The total amount of funds available through the State and Federal mechanisms must at least equal the amount required under RCRA.

4. Maintaining Coverage. Owners or operators have a continuing responsibility to maintain adequate liability coverage. Thus, owners or operators must maintain coverage by paying premiums and providing alternate coverage in the event of the incapacity of the insurer, etc. Procedures for doing this will vary with the type of mechanism being used; owners or operators should consult the other chapters in this manual for details. The owner or operator should also arrange for the Regional Administrator to receive any notice of termination, cancellation, or nonrenewal required of the insurer, etc.

5. Permitted Facility Requirements. To receive a RCRA permit, new and EXISTING FACILITIES must satisfy RCRA liability coverage requirements for PERMITTED FACILITIES. If the facility is located in a state without INTERIM AUTHORIZATION, or with interim authorization but without effective liability coverage requirements, liability coverage must be demonstrated to the appropriate Regional Administrator as described in the other chapters of this manual. State-required mechanisms or assumptions of responsibility may be used to fulfill RCRA requirements in whole or part as discussed previously. The main point to remember is that unless the facility is located in a state with Phase II interim authorization to issue permits in lieu of RCRA permits (see Exhibit I-1), it must satisfy Federal RCRA standards to receive a RCRA permit and may comply by using State-required mechanisms or State assumptions of responsibility, if any. In some cases, states with Phase II interim authorization for storage facilities and incinerators may not have liability coverage requirements in effect by the effective date of the Federal RCRA liability coverage requirements. However, these states must commit to adopt liability coverage requirements substantially equivalent to Federal RCRA standards as quickly as practicable and in no event later than the state's

application for an additional Component of Phase II interim authorization. Inasmuch as no state is expected to receive Phase II interim authorization for permitting land disposal facilities by the effective date of the liability coverage requirements, land disposal facilities must comply with the Federal RCRA standards (including nonsudden coverage) to receive a RCRA permit. See Section A.8 of Chapter II for a more detailed discussion.

B. REGIONAL OFFICE RESPONSIBILITIES

This section outlines the responsibilities of the Regional Offices in reviewing State liability coverage mechanisms for equivalency. A summary checklist is provided as Attachment IV-2.

1. **Evaluating Equivalency.** The Regional Administrator must determine whether the State mechanism or assumption of responsibility provides liability coverage at least equivalent to the Federal RCRA liability coverage mechanisms. Equivalency should be evaluated principally in terms of two criteria:

(1) **Certainty of the availability of funds for claims.** For example, the State mechanism must demonstrate a minimal risk of defaulting or lapsing due to insurer liquidation, change in ownership, or cancellation of insurance, without the provision of alternate coverage.

(2) **The amount of funds that will be made available.** The owner or operator must demonstrate that the State mechanism will assure payment of claims arising from sudden and nonsudden accidental occurrences exclusive of LEGAL DEFENSE COSTS in amounts at least equal to the Federal RCRA requirements. Any requests for VARIANCES should be handled as described in Chapter II, Section B.4.

Regional Administrators must evaluate State mechanisms and compare them to the allowable Federal mechanisms principally on the basis of the two criteria of certainty of coverage and amount of funds. This could be a very complex task, and the Regional Administrator must be careful to consider many factors. These factors include:

- Qualifications required of participating financial institutions and insurers;
- Requirements of the FINANCIAL TESTS, if applicable;
- Time periods covered by the State mechanism;
- The amount of funds assured as compared to the RCRA requirements;

- Exclusion of legal defense costs; and
- Provision for future contingencies, including bankruptcy, cancellation, or changing mechanisms.

In general, Regional Offices should first analyze the State mechanism itself for adequacy before reviewing the amount of coverage offered. State liability coverage mechanisms typically include insurance, SELF-INSURANCE, and, in some cases, financial tests. This means that Regional Offices can use Federal requirements as a benchmark for evaluating these instruments. In reviewing the components of a mechanism, Regional Offices should distinguish requirements that are more stringent than the Federal RCRA rules from requirements that are less stringent.

Regional Offices should review State financial tests against Federal financial test criteria with special care because this mechanism does not involve the advance financing of a fund for later use or the UNDERWRITING of the risk of claims (e.g., insurance).

The checklists provided throughout this manual may be used for evaluating equivalency. Regional Offices may wish to consult with EPA Headquarters to discuss questions and options for evaluating equivalency. A more detailed guidance on equivalency determinations is being reviewed and will be made available to Regional Office personnel.

State assumptions of responsibility may be more difficult to review in the absence of Federal standards for comparison. Regional Offices should review exactly which claims are covered by such an assumption (e.g., personal injury and property damage). Regional Offices should not attempt to evaluate the future adequacy of State liability claims funds but may ask to review any such studies prepared by the responsible state agency.

The Regional Administrator must also determine which types of liability claims are covered neither by the State mechanism nor by the State assumption (if any) in order to identify additional coverage needed to satisfy Federal requirements. A state, for example, may only require coverage for sudden accidental occurrences.

Finally, the dollar amount of coverage must also be reviewed to determine equivalency. If the amount provided is inadequate, the owner or operator should be required either to increase coverage afforded by the State mechanisms or establish an additional Federal mechanism.

2. Reviewing Submissions. The Regional Administrator should review the information submitted by the owner or operator to verify that all the required information is included. In addition to the facility's EPA Identification Number, name, address, and the amount of liability coverage assured, the following should be reviewed:

- evidence of the establishment of a State-required mechanism, such as a copy of the insurance policy, endorsement or certificate of insurance, or corporate guarantee with the state listed as a beneficiary, including all required attachments, such as ACKNOWLEDGEMENTS, POWER OF ATTORNEY, etc.;

- a letter from the state describing the nature of the State's assumption of responsibility, if any, signed by an appropriate state-agency official; and

- a cover letter requesting that the State mechanism and/or assumption of responsibility be considered acceptable for meeting, in whole or part, the Federal RCRA liability coverage requirements.

Three pieces of information should be entered into the HWDMS: (1) the code for the type of instrument being used; (2) the amount of the cost estimates for which financial assurance for closure or post-closure care and liability coverage are provided by the financial test; and (3) the name of the financial third party (e.g., insurer) or parent guarantor.

Three sample owner or operator request letters are included as attachments. They represent situations where:

(1) a combination of a State-required mechanism and assumption of responsibility are requested to satisfy fully or partially the Federal RCRA requirements (Attachment IV-3);

(2) State-required mechanisms equivalent to RCRA assurances are requested to fully satisfy the Federal RCRA requirements (Attachment IV-4); and

(3) a State-required mechanism not equivalent to RCRA assurances is requested to fully or partially satisfy the Federal RCRA requirements (Attachment IV-5).

Resort to state law as a means of fulfilling applicable RCRA requirements will fall into one of these three typical situations.

3. Verifying Conformity to Requirements. Regional Administrators must advise owners or operators concerning the acceptability of State mechanisms and assumptions of responsibility. Pending this determination, the owner or operator will be deemed to be in compliance with the applicable RCRA liability coverage requirements. Any additional coverage needed for the assurance to be at least equivalent to RCRA requirements should be specified. Additional assurances may be provided by increasing the amounts available under State mechanisms or using additional mechanisms meeting RCRA requirements.

4. Ensuring Maintenance of Coverage. Should the state receive interim authorization to administer its own hazardous waste management program, the Regional Administrator should consent to the termination of liability coverage mechanisms only when no lapse in coverage will result. The Regional Administrator should arrange to receive any notice of termination, cancellation, or nonrenewal required of the insurer, etc.

5. Permitted Facility Requirements. Owners or operators may use State-required mechanisms or State assumptions of responsibility to satisfy Federal liability coverage requirements for permitted facilities in states which have not received applicable Phase II interim authorization. The guidance in this chapter applies to such situations.

C. SOURCES OF FURTHER INFORMATION

Because many state laws and regulations are currently in a state of flux, owners or operators are advised to contact the appropriate state agency to determine applicable requirements. State agency contacts are listed in Appendix B-1 of the manual for **Financial Assurance for Closure and Post-Closure Care**. EPA Regional Office contacts can also advise regarding the authorization status of State programs (see Appendix A).

ATTACHMENT IV-I

RCRA STATE LIABILITY COVERAGE MECHANISMS CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *

(1) —— Identify pertinent state laws and requirements which can be used to satisfy RCRA regulations.

(2) —— Submit by the effective date:

—— Letter requesting consideration of State mechanism and/or assumption of responsibility to apply for RCRA requirements

—— Signed copies of documents (with associated attachments, acknowledgments, or certificates)

—— Letter from state agency acknowledging completion of State requirements, if available

—— Letter from state agency describing the nature of the State's assumption of responsibility

—— EPA Identification Number and information on each facility, including amount of liability coverage assured.

(3) —— Satisfy Federal requirements by providing additional coverage as necessary.

" —— Arrange for the Regional Administrator to receive copies of all notices of non-renewal, cancellation, or termination of assurance.

(4) —— Maintain coverage throughout operating life of facility, including

—— Change of mechanisms as required to maintain coverage in the event of incapacity, disallowance, liquidation or ineligibility of insurer

---

* Numbers correspond to paragraphs in Section A.

ATTACHMENT IV-2

RCRA STATE LIABILITY COVERAGE MECHANISMS CHECKLIST FOR REGIONAL OFFICES

The Regional Administrator should ensure that:

Paragraph Number *

(1) —— Equivalency of State mechanisms or assumptions of responsibility is determined principally on the basis of:

" —— Certainty of availability of funds, including:

—— Qualifications for insurers, parent guarantors, or financial test

—— Enforceability of corporate guarantees

—— Adequate notice prior to termination, cancellation, or non-renewal of insurance and provisions for obtaining alternate coverage prior to termination, cancellation, or non-renewal

—— Requirements of financial test (e.g., assets, ratios)

—— Provisions for maintenance of coverage in the event of liquidation or incapacity of insurer, or bankruptcy or incapacity of parent guarantor; transfer of ownership or operation; change in mechanism

—— Source of funds to be used by states assuring payment of liability claims.

" —— Amount of funds available, including:

—— Sudden and nonsudden coverage per accidental occurrence and in the aggregate, compared to RCRA requirements

—— Exclusion of legal defense costs

—— Types of claims covered

—— Amount of funds available through State accounts or revolving funds

---

* Numbers correspond to paragraphs in Section B.

ATTACHMENT IV-2 (continued)

RCRA STATE MECHANISMS CHECKLIST FOR REGIONAL OFFICES

Paragraph Number *

(2) —— The initial submission is complete, including:

—— Owner or operator request letter

—— Evidence of establishment of State mechanism, such as copies of executed (i.e., signed) insurance certificates, financial instruments, letters of acknowledgment from state agency, etc.

—— Identifying information for covered facilities and amount of coverage

—— Copy of letter from state agency describing assumption of responsibility

" —— The owner or operator is notified of the equivalency determination

(3) —— The amount of coverage at least equals the amount required by RCRA standards

—— State mechanisms and/or assurance completely fulfill RCRA requirements

—— Coverage provided by additional mechanisms is consistent with RCRA requirements

(4) —— Coverage is maintained

—— State mechanisms provide for maintenance of coverage and owner or operator is in compliance

—— There is no lapse in coverage if the state receives interim authorization

---

* Numbers correspond to paragraphs in Section B.

ATTACHMENT IV-3

SAMPLE OWNER OR OPERATOR REQUEST LETTER (1)

HazWaste Corp.
Address
Date

EPA Regional Administrator
U.S. EPA Region
Street Address
City, State, Zip Code

Subject: RCRA Liability Coverage Requirements

Dear Sir/Madam:

This letter is submitted to request that RCRA liability coverage requirements (40 CFR 265) be deemed satisfied, in whole or part, by State mechanisms and/or assumptions of responsibility with which HazWaste Corp. is in compliance.

HazWaste Corp. owns and operates three (3) facilities in State X whose EPA Identification Numbers and addresses are as follows:

[Insert identifying information]

State X requires financial responsibility demonstrations to cover the costs of personal injury claims consistent with the degree and duration of the risk imposed. Both sudden and nonsudden accidental occurrences are covered in aggregate amounts of $4 million per occurrence and $8 million aggregate per year. See Rules 26.04 and 26.08 of the State X Department of Environmental Protection. HazWaste Corp. has established the required insurance, as evidenced by the following documents which are attached:

(A) Copy of certificate of insurance (Attachment A) and

(B) Letter from State X Department of Environmental Protection acknowledging satisfaction of state requirements (Attachment B).

In addition, State X has established a Spill Compensation Fund to provide for property damage claims. See Rules 30.50 through 30.70. We have attached a letter from the state agency acknowledging the applicability of the State fund to our facilities. (See Attachment C.)

ATTACHMENT IV-3 (continued)

SAMPLE OWNER OR OPERATOR REQUEST LETTER (I)

In conclusion, we request that the combination of our State-required financial responsibility demonstrations and the State compensation fund be deemed to satisfy completely Federal RCRA liability coverage requirements. We will be pleased to provide any further information you may need.

Sincerely,

President, HazWaste Corp.

Attachments
- A. Certificate of Insurance
- B. State agency acknowledgment
- C. State assumption of responsibility

ATTACHMENT IV-4

SAMPLE OWNER OR OPERATOR REQUEST LETTER (II)

Waste Control Inc.
Address
Date

EPA Regional Administrator
U.S. EPA Region
Street Address
City, State, Zip Code

Subject: RCRA Liability Coverage Requirements

Dear Sir/Madam:

This letter is submitted to request that RCRA liability coverage requirements be deemed satisfied by State rules with which Waste Control Inc. has complied.

Waste Control Inc. owns and operates one (1) facility in State Y located at [insert address] assigned EPA Identification Number [insert number].

State Y has adopted by reference the RCRA liability coverage requirements of 40 CFR 264 and 265, as amended. See Rule 70Y(2) of the State Department of Natural Resources. Waste Control Inc. has secured an insurance policy endorsement issued by , a copy of which is attached. The State Y [insert appropriate agency] has accepted this insurance policy as fulfilling the requirements of Rule 70Y(2).

Accordingly, we request that the establishment of this liability assurance mechanism be determined acceptable for meeting the requirements of 40 CFR 265. Further information, if needed, will be supplied at your request.

Thank you,

Comptroller, Waste Control Inc.

Attachments
A. Insurance Policy Endorsement (copy)
B. State agency acknowledgment (copy)

ATTACHMENT IV-5

SAMPLE OWNER OR OPERATOR REQUEST LETTER (III)

Synthetic Chemical Industries
Address
Date

EPA Regional Administrator
U.S. EPA Region
Street Address
City, State, Zip Code

Subject: RCRA Liability Coverage Requirements

Synthetic Chemical Industries ("SCI") owns two hazardous waste facilities in the State of Z, both of which are in interim status and subject to the liability coverage requirements of 40 CFR 265. The EPA Identification Numbers and addresses are:

[Insert identifying information]

SCI has complied with Section 394B of the Public Health Code of State Z by providing insurance to assure the payment of damage claims for property damage and personal injury resulting from sudden accidental occurrences. As required by state law, this insurance must be in the amount of $10,000 per acre of land for which a State Z permit is required, but in no event for less than $100,000. SCI has obtained insurance of $250,000 and $420,000, respectively, for the two sites identified above. Pursuant to state law, liability coverage is to extend until five (5) years after the closure of the landfill. This obligation is binding on the heirs, representatives, successors, and assignees of SCI.

SCI requests that this State-required mechanism be determined acceptable for meeting the liability coverage requirements of 40 CFR 265, in whole or in part. Pending this determination, SCI understands that it will be deemed to be in compliance with such requirements (40 CFR 265.149(b)). SCI intends to provide whatever additional liability coverage assurances are determined necessary.

Sincerely,

General Counsel, SCI

Attachments

GLOSSARY OF TERMS*

ACCIDENTAL OCCURRENCE
An accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

ACCOUNTANTS OPINION
See REPORT ON EXAMINATION.

ACKNOWLEDGE, ACKNOWLEDGMENT (OF AN INSTRUMENT)
Formal declaration before an authorized official such as a notary, by the person who executed the instrument, that it is his free act and deed.

ADMITTED CARRIER
An insurance company licensed to do business in a state.

ADVERSE OPINION
Statement by an accountant that the financial statements of the firm do not present fairly the financial condition of the firm in conformity with generally accepted accounting principles. This type of opinion will cause the EPA to disallow the financial test for the firm.

AGENT
Person authorized to sell insurance coverage as a representative of an insurer or underwriter. May need to be licensed. See also BROKER.

ALIEN INSURER
An insurance company domiciled outside the United States.

AMORTIZATION
Gradual reduction of the accounting or "book" value of a fixed asset by allocation of part of the cost of the asset over time to individual accounting periods. The term is used to refer to assets whose life is limited but which do not physically wear out. Examples include copyrights, patents, and leases. See also DEPRECIATION.

ANNUAL AGGREGATE AMOUNT
The maximum liability protection afforded by an insurance policy in any given year. RCRA regulations currently require minimum annual aggregate levels at $2.0 million for sudden accidental occurrences and $6.0 million for nonsudden accidental occurrences.

* These designations are intended to assist the reader in understanding the regulations. This glossary does not purport to set out the full definition of each term used in all contexts.

ASSETS

All existing and all probable future economic benefits obtained or controlled by a particular entity. Any right or physical property that is owned and has a monetary value.

AUDIT

Systematic inspection of accounting records involving analyses, tests and confirmations.

AUTOMATIC EXTENSION, AUTOMATIC RENEWAL

Continuation of an insurance policy or letter of credit without the need for renegotiation.

BINDER

A record of an insurance transaction or arrangement issued by a carrier pending delivery of the formal insurance contract (policy).

BODILY INJURY

Such physical injuries as are recoverable as a liability under applicable state law. However, the term does not include those liabilities which, consistent with standard industry practice, are excluded from coverage in liability policies for bodily injury. For example, the insurance policy need not cover injuries caused by war, injuries covered by worker's compensation or disability benefits, or intentional injuries.

BOND RATING

An assessment of the credit-worthiness of an obligor with respect to a specific debt obligation (bond). Ratings are designated by letter--e.g. AA, A, B, etc. For the purpose of these regulations, Moody's and Standard & Poor's are the only two acceptable bond-rating corporations. See also INVESTMENT GRADE.

BROKER

An independent businessperson whose principal function is to represent an insured (client) in obtaining optimum insurance protection at the most advantageous price. A broker is not a licensed representative of any particular insurer and is thus free to arrange insurance (i.e., "shop" a risk) from virtually any commercial insurer. See also AGENT.

BUY BACK

A type of coverage excluded under the basic terms of the policy which can be included for the payment of an additional premium. Normally refers to reinstatement of limits used up by claims payments.

CGL

Stands for "Comprehensive General Liability" which is a policy form designed to provide an "all hazards" scope of protection, subject to certain exclusions and conditions specified in the policy form.

CAPTIVE INSURER

An insurance company set up by a company or group of companies to insure their own risks, or risks common to the group. Captive insurers may qualify under the Federal regulations by obtaining a license in one of the several states which currently license captive insurers or by becoming eligible or authorized to transact the business of insuring as a surplus lines or excess insurer in a state.

CARRIER

An insurance company.

CASH FLOW

In accounting, a company's net income (sales minus operating expenses) plus allowances for depreciation, depletion, and amortization. Represents the funds available for working capital and expansion.

CERTIFICATE OF INSURANCE

A statement obtained from the insurer certifying that it has issued insurance as represented in the certificate. Not part of the insurance policy itself.

CERTIFIED PUBLIC ACCOUNTANT (CPA)

An accountant with a special state license indicating that he or she meets certain requirements for the public practice of accounting. Although requirements vary from state to state, all must pass an examination administered by the American Institute of Certified Public Accountants.

CHIEF FINANCIAL OFFICER

The principal financial officer required to sign **SEC FORM 10-K's** or the equivalent.

CLAIMS MADE

An insurance policy form under which coverage is triggered only when claims are made during the policy period. The period of coverage under claims made policy forms may be further expanded or restricted by incorporation of "Discovery Period" or "Retroactive Period" provisions. See also, **OCCURRENCE-BASED COVERAGE.**

CLOSURE OR POST-CLOSURE CARE INSURANCE

A type of insurance coverage that provides funds for final closure or post-closure care and thereby satisfies the financial assurance requirements for closure and post-closure care. Not to be confused with liability insurance.

CORPORATE GUARANTEE

A guarantee by the owner's or operator's parent corporation that it will meet all financial assurance obligations specified in the regulations. Not permitted as a means of liability coverage.

CURRENT ASSETS

Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business or within one year if the operating cycle is less than one year.

CURRENT LIABILITIES

Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities or those expected to be satisfied within a relatively short period of time, usually one year.

DEDUCTIBLE

That part or amount of a loss which is not covered by the insurer, but is retained by the insured. Under RCRA, deductibles are permitted, however, the regulations require the insurer to pay any deductible and then seek reimbursement from the insured policyholder. See also **POLICY LIMITS**, **SELF-INSURANCE**, and **SELF-RETENTION**.

DEPLETION

In accounting, an allowance made for the shrinkage or exhaustion of a natural resource.

DEPRECIATION

In accounting, the method of allocating part of the cost of an asset that will be used up over time to individual accounting periods. The number of accounting periods does not necessarily correspond to the actual life of the asset, i.e., a building that lasts 40 yeas may be depreciated over 10 years. See **AMORTIZATION**.

DISCLAIMER OF OPINION

Statement that the auditor does not express an opinion on the financial statements of the firm. This statement will cause EPA to disallow the use of the financial test for the firm.

ENDORSEMENT

In insurance, a form attached to an insurance policy that describes the original terms of the policy and any alterations in those terms. Specifically, the attachment to the owner's or operator's policy that provides liability coverage for bodily injury and property damage.

ENVIRONMENTAL IMPAIRMENT LIABILITY INSURANCE

A type of insurance coverage designed to provide financial protection to an owner or operator from pollution or environmental damage claims.

EXCESS COVERAGE

This type of insurance provides coverage above a specified figure and up to a specified limit. This insurance can be combined with a CGL policy to raise the liability limits of specified coverages. Also see **UMBRELLA COVERAGE**.

EXCESS OR SURPLUS LINES

The designation that a state may give to insurance companies which provide the insurance coverages which are not readily available from companies licensed or "admitted" to transact business in that state. Because such companies cannot be regulated, states often control their ability to transact business through the regulation of brokers and agents. In addition, some states maintain lists of eligible excess or surplus lines insurers which brokers may place business with. For an Excess or Surplus Line carrier's policy to comply with the regulations, the carrier must be eligible to provide coverage in one or more states. Captive or alien insurers not meeting either the licensing or eligibility requirements cannot issue liability policies which will comply with the regulations.

EXCLUSION

A provision in an insurance policy that certain causes of loss or certain results are not covered by the policy under any circumstances.

EXISTING FACILITY

A facility that was in operation, or for which construction commenced, on or before November 19, 1980. A facility has commenced construction if the owner or operator has obtained Federal, state, and local approval to begin construction, and physical construction has begun, or contracts for physical construction have been signed.

EXTENDED REPORTING PERIOD

Often referred to as a "Discovery Period." A provision in claims made policy forms which provides that an insured, for the payment of an additional premium, may obtain an extension of coverage following termination of the policy, for losses occurring during the policy period but which are not brought until after the policy's termination.

FACE AMOUNT OF POLICY

The total amount the insurer is obligated to pay under the policy. The insurer's limit of liability or **POLICY LIMIT**.

FACE VALUE

The value of a security, insurance policy, or letter of credit, expressed as a specific sum of money, which is printed, stamped, or otherwise marked on its face.

FIDUCIARY

A person with the duty to act on behalf of another or to protect the interests of another.

FINAL AUTHORIZATION

Approval by EPA of a State program which has met the requirements of §3006(b) of RCRA and the applicable requirements of Part 123, Subparts A and B. The earliest a State program can receive final authorization is January 26, 1983.

FINANCIAL STATEMENTS

Formal reports of the status of accounts at a particular time, prepared to show the operating results and financial condition of the firm. The statements include the balance sheet, income statement, and statement of changes in financial position.

FINANCIAL TEST

Two sets of criteria related to a company's financial soundness, specified in RCRA regulations, either of which if satisfied by an owner or operator will establish liability coverage. A similar financial test can be used by an owner, operator, or corporate parent to establish financial assurance for closure and post-closure care.

FIRST DOLLAR BASIS

An insurance policy which, in the event of a loss within the policy limit, will pay the entire loss. RCRA regulations require that if a policy incorporates a deductible the insurer will settle the claim and seek reimbursement from the insured, unless the financial test is being used by the owner or operator to assure that portion of the coverage requirements.

FORM 10-K, FORM 10-Q

A type of report that U.S. corporations file with the Securities and Exchange Commission. It frequently contains more information than the annual report distributed to stockholders. The 10-K is submitted annually; the 10-Q quarterly.

GRADUAL POLLUTION COVERAGE

Also referred to as nonsudden pollution coverage; a policy designed to provide insurance protection for pollution incidents which take place over time and result in bodily injury or property damage neither expected nor intended by the insured.

GUARANTOR

One who guarantees payment of a present or future obligation.

INTERIM AUTHORIZATION

Approval by EPA of a state hazardous waste program that has met the requirements of §3006(c) of RCRA and applicable requirements of Part 123, Subpart F. Interim authorization will expire no later than January 26, 1985. See also **PHASE I** and **PHASE II**.

INTERIM STATUS FACILITIES

Existing hazardous waste management facilities which submitted notification under RCRA Section 3010 and Part A of the RCRA permit application by November 19, 1980. Facility owners and operators with interim status are treated as having been issued a permit until EPA or a state with interim authorization for Phase II or final authorization under Part 123 makes a final determination on the permit application. Facility owners and operators with interim status are not relieved from complying with State requirements.

INVESTMENT GRADE
A bond or other debt instrument with a rating from Moody's of Aaa, Aa, A, or Baa; or a rating from Standard & Poor's of AAA, AA, A, or BBB.

ISSUER
The party who issues an insurance policy or guarantee.

LEGAL DEFENSE COSTS
Any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

LIABILITIES
In accounting, probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events. In law, legally binding obligations, often to THIRD PARTIES.

LIABILITY LIMITS
See POLICY LIMITS.

MOODY'S
One of the two bond-rating agencies acceptable for purposes of these regulations. Address: Moody's Investors Service, Inc., 99 Church Street, New York, New York 10007.

NET INCOME
The difference between total sales and total costs of goods sold plus expenses over the fiscal year.

NET WORKING CAPITAL
Current assets minus current liabilities.

NET WORTH
Total assets minus total liabilities; it is equivalent to owner's equity.

NONSUDDEN ACCIDENTAL OCCURRENCE
An accident, including continuous or repeated exposure to conditions resulting in bodily injury or property damage neither expected nor intended from the standpoint of an insured.

OCCURRENCE-BASED COVERAGE
A form of insurance contract which covers claims based on whether the causal event occurred during the policy period, not whether the claim was filed during the policy period. It is not currently available for nonsudden pollution occurrences.

PARENT CORPORATION
A corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

PARENT GUARANTOR
A parent corporation which provides a corporate guarantee.

PERMITTED FACILITIES
Facilities which have demonstrated compliance with RCRA standards and have received final RCRA permits.

PHASE I INTERIM AUTHORIZATION
The first phase of interim authorization of State programs by EPA. It allows states to administer a hazardous waste program in lieu of and corresponding to that portion of the Federal program which covers identification and listing of hazardous waste, generators and transporters of hazardous waste, and establishes preliminary standards for hazardous waste treatment, storage, and disposal facilities. States need not have established financial responsibility requirements to receive Phase I interim authorization.

PHASE II INTERIM AUTHORIZATION
The second phase of interim authorization of State programs by EPA. It allows states to establish a permit program for hazardous waste treatment, storage, and disposal facilities in lieu of and corresponding to the Federal hazardous waste permit program, including financial assurance requirements for both interim status and permitted facilities. Phase II interim authorization is granted in separate components for treatment, storage, and land disposal facilities.

POLICY LIMITS
The maximum amount the insurer is obligated to pay in the settlement of claims, often expressed on an annual aggregate and per occurrence basis.

POLLUTION LIABILITY INSURANCE
Insurance designed to provide protection for bodily injury, property damage and environmental impairment resulting from the sudden or gradual discharge, dispersal, release, escape or seepage of toxic substances into the environment.

POWER OF ATTORNEY
A written authorization of another party to act as one's agent or attorney.

PREMIUM PAYMENTS
The periodic payments of money which the policy-holder agrees to pay the insurer for an insurance policy.

PROPERTY DAMAGE
Such damage to property which is recoverable as a liability under applicable state law. However, the term does not include those liabilities which, consistent with standard industry practice, are excluded from coverage in liability policies for property damage. For example, the RCRA insurance policy need not cover property damage caused by war, covered by automobile insurance policies, or intentionally caused.

QUALIFIED OPINION
Statement by an accountant that the financial statements of a firm present fairly the financial condition of the firm, subject to certain conditions, or except for certain limitations.

REPORT ON EXAMINATION
The independent certified public accountant's report on the financial statements, support schedules, and footnotes. Often referred to as the accountant's report or the auditor's opinion. The report on examination usually contains two paragraphs -- a scope paragraph and an opinion paragraph. The scope paragraph indicates the financial presentations covered by the opinion and affirms that generally accepted auditing standards and practices have been followed by the auditors. The opinion paragraph contains the accountant's opinion of the financial statements, schedules and footnotes. The opinion can be unqualified, qualified, or adverse; or there can be a disclaimer of opinion. See QUALIFIED OPINION, UNQUALIFIED OPINION, ADVERSE OPINION, and DISCLAIMER OF OPINION.

RETROACTIVE DATE
A provision in claims made policy forms to limit coverage for occurrences which occurred prior to that date.

RIDER
In insurance, a form adding special provisions to a policy. See also ENDORSEMENT.

SECURITIES OR OTHER OBLIGATIONS
Written instruments showing evidence of indebtedness of a business or equity ownership of a business. Bonds are securities which bear interest.

SELF-INSURANCE, SELF-RETENTION
The financing of losses from within the financial structure of an entity, rather than transferring losses to an insurance company by purchase of liability insurance. Owners and operators may comply with the RCRA financial responsibility requirements using self insurance by passing the financial test specified in the regulations.

SPECIAL REPORT
The independent certified public accountant's confirmation that the financial data in the letter from the chief financial officer were derived from the annual report and need no adjustment.

STANDARD & POOR'S
One of the two bond-rating agencies acceptable for purposes of these regulations. Address: Standard & Poor's Corp., 25 Broadway, New York, New York 10004 or P.O. Box 992, New York, New York 10275.

SUDDEN ACCIDENTAL OCCURRENCE
An accidental occurrence which is not continuous or repeated in nature.

TANGIBLE NET WORTH
Net worth minus intangible assets, such as goodwill and rights to patents or royalties.

THIRD PARTIES
Persons not parties to the insurance contract between insurer and insured but who may make claims under the policy.

TOTAL LIABILITIES
Total debts owed by a business or individual including all liabilities.

UMBRELLA COVERAGE
A form of liability insurance designed to increase the limits of liability as excess insurance over primary policies. In addition, the umbrella form may provide a broader scope of coverage than the underlying primary policies. When this occurs the umbrella "drops down" and acts as a primary insurance policy. See also EXCESS LIABILITY.

UNDERWRITE (A RISK)
To insure or assume a risk. In insurance, a person or company underwrites all or part of the risk against theft, fire, death, or whatever the policy stipulates, in exchange for a payment called a premium.

UNQUALIFIED OPINION
Statement by an accountant that the financial statements of a firm present fairly the financial position, results of operations, and changes in financial position in conformity with generally accepted accounting principles consistently applied.

VARIANCE
An alteration in the general terms of a requirement based on considerations specific to a facility.

APPENDIX A

EPA FINANCIAL ASSURANCE REGIONAL OFFICE CONTACTS

For information on implementation of the financial assurance regulations, contact the EPA regional offices below:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

Gary Gosbee
Waste Management Branch
John F. Kennedy Building
Boston, Massachusetts 02203
(617) 223-3468

Region II (New Jersey, New York, Puerto Rico, U.S. Virgin Islands)

Helen S. Beggun, Chief
Grants Administration Branch
26 Federal Plaza
New York, New York 10278
(212) 264-9860

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

Anthony Donatoni
Hazardous Materials Branch
6th and Walnut Streets
Philadelphia, Pennsylvania 19106
(215) 597-7937

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Micky Hartnett
Residuals Management Branch
345 Courtland Street, N.E.
Atlanta, Georgia 30365
(404) 881-3067

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Thomas Golz
Waste Management Branch
230 South Dearborn Street
Chicago, Illinois 60604
(312) 886-4023

Please mark all submissions: "Attention: RCRA Financial Requirements"

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

Henry Onsgard
U.S. EPA Regional Office
1201 Elm Street
First International Building
Dallas, Texas 75270
(214) 767-8941

Region VII (Iowa, Kansas, Missouri, Nebraska)

Robert L. Morby, Chief
Hazardous Materials Branch
324 East 11th Street
Kansas City, Missouri 64106
(816) 374-3307

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Carol Lee
Waste Management Branch
1860 Lincoln Street
Denver, Colorado 80295
(303) 837-6258

Region IX (American Samoa, Arizona, California, Commonwealth of the Northern Marianas Islands, Guam, Hawaii, Nevada)

Richard Procunier
Hazardous Materials Branch
215 Fremont Street
San Francisco, California 94105
(415) 974-8157

Region X (Alaska, Idaho, Oregon, Washington)

Kenneth D. Feigner, Chief
Waste Management Branch
1200 Sixth Avenue
Seattle, Washington 98101
(206) 442-1236

Please mark all submissions: "Attention: RCRA Financial Requirements"